



MAKING UK TRADE WORK FOR DEVELOPMENT POST-BREXIT

WORKSHOP REPORT

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Dr Emily Jones

Associate Professor in Public Policy,
Blavatnik School of Government, Oxford

Conrad Copeland

Research Assistant,
Global Economic Governance Programme, Oxford

Hosted by



Cambodian textile and apparel exports
– at risk from Brexit?
Exporters are worried

1. Introduction

Brexit has significant implications for UK trade with developing countries. Members of the UK government recently committed to ensuring that “development must be, and will continue to be, at the heart of the UK’s approach to international trade”.¹ On 5 May 2017 the Blavatnik School of Government, University of Oxford, hosted an expert workshop to explore the impact of the UK’s withdrawal from the EU on trade with developing countries and to identify specific policy options the UK government can consider in delivering on its commitment.

Three headline messages emerged from the workshop. **First**, the UK’s withdrawal from the EU is likely to substantially increase the costs for developing countries of accessing the UK market, and the UK government should act now to minimise these costs. **Second**, the UK is a significant trading partner for many developing countries and while UK trade policy is no ‘magic bullet’ for development, there are a series of options that the UK government can consider to ensure that UK trade policy post-Brexit supports sustainable development. **Third**, in order to properly evaluate these options, more information and analysis are needed in very specific areas.

This report summarises the workshop discussions, distils policy options and identifies specific areas for further research. Attached to this report is a series of memos written and presented by the participants at the workshop. The memos are cross-referenced in this summary report and elaborate on key points.

The workshop was co-convened by the Blavatnik School of Government, Oxfam GB, Traidcraft, the Commonwealth Secretariat and the Overseas Development Institute. It brought together experienced researchers, development practitioners, trade lawyers as well as representatives from developing country governments, international organisations, development NGOs, and the private sector (see the attached list of participants, pg 11). All of the conclusions reached and policy recommendations expressed by participants were their own and do not reflect the positions or advocacy of their respective organisations, unless otherwise stated.

¹ <https://www.gov.uk/government/speeches/priti-patel-commonwealth-trade-speech>

2. Unilateral Preferences

Developing countries currently have preferential access to the UK market under the EU’s Generalized System of Preferences (GSP) scheme. At present about 70 developing countries are eligible for the EU’s standard GSP scheme. Of these countries, 8 are eligible for the Enhanced GSP or GSP+, scheme, while just over 40 least developed countries are eligible for Everything But Arms. By far the most liberal aspect of the EU’s GSP scheme is the Everything But Arms programme that has provided duty-free quota-free access to the EU market to all least developed countries since 2001. It has been particularly important for cultivating new revenue streams in some of the world’s poorest nations, including Bangladesh and Cambodia, which depend on the scheme to export garments.

ADDRESSING TRADE DISRUPTION ARISING FROM EXPIRY OF UNILATERAL PREFERENCES

The survival and performance of many firms and sectors exporting from developing countries to the UK depends on whether preferential access to the UK market continues (see **Luke**, pg 31). Participants agreed that an obvious policy option for the UK government is to replicate the EU’s current set of unilateral preferences (the GSP scheme including GSP+ and Everything But Arms) in its post-Brexit trade regime. This commitment could to be made and publically communicated to developing countries as soon as possible to provide legal certainty and assurance for developing country producers, exporters and investors. Participants noted that even if the UK replicates the EU’s preference schemes, developing countries exporting under these schemes are likely to face additional non-tariff barriers as the result of the UK’s exit from the EU in the form of potentially divergent product standards and additional customs checks (discussed further below).

IMPROVING UNILATERAL PREFERENCES

Beyond addressing the immediate challenge of trade disruption, the UK faces some important choices about its general policy on unilateral preferences for developing countries. One option is for the UK to pursue a goal of opening up its market as much as possible to all countries, through unilateral reduction of its most-favoured nation tariffs and reducing the costs of non-tariff barriers. This option would lead to an increase of imports from developing countries that are the world’s most competitive producers but it would erode preferences and could lead to a sharp reduction of imports from countries where production costs are relatively high, which

includes many least developed countries and small and vulnerable economies. As one participant noted “preferences for everyone are preferences for no-one”.

If the UK opts for such broad-based liberalisation, it will be important to provide adjustment support for preference-dependent countries and sectors to help them adjust. There are examples of successful aid-for-trade projects that have supported industries to become competitive, including the rum industry in the Caribbean. However, as **Campling** (pg 17) notes, diseconomies of scale and high transaction costs in many small and vulnerable economies means that free trade risks resulting in ‘no trade’ for these economies. Before the UK takes any steps to liberalise its markets it is vital to identify the specific country-product combinations would be negatively affected by preferences erosion and to work with the governments of these countries to explore the viability of diversification strategies.

The second, and arguably more likely, option is for the UK to seek to replicate the general pattern of EU external tariffs and maintain schemes of preferences for developing countries.² If the UK pursues this option then the UK government could take a series of steps to improve upon the EU’s preference schemes. Indeed, the UK could have the explicit goal of becoming the first country to have preference utilisation rates of 100%.

While the EU’s preference schemes are generally well-regarded, participants had a number of specific suggestions on how they could be improved (see **Grady**, pg 23; **Revis**, pg 47; and **Mitchell**, pg 39 for further details on many of the points below):

- **Certainty:** Frequent changes to EU preferences, including to the list of qualifying countries and products, could potentially deter exporting and importing companies from using them. In its future schemes the UK could commit to making changes on a periodic basis, providing companies with sufficient lead-time to make adjustments to their supply chains, and clearly communicating any changes to UK importers and exporters in developing countries.
- **Simple and Less Restrictive Rules of Origin:** The rules on EU preferences are extremely complex and hard for companies to navigate. Simplification, particularly in rules of origin, could improve utilisation of preferences (discussed further below).
- **Transport and Non-Manipulation Rules:** The strictness of non-manipulation requirements can have a significant impact upon the utilization of preferences. If an importer performs a minor operation in a third country such as aggregation, which does not affect the goods themselves, the goods may lose their preferential origin and become dutiable. This could be exacerbated after Brexit in situations

where (for example) a company has an existing supply chain whereby goods are imported into the Netherlands, repackaged and then dispatched to the UK. At this point, the goods may lose their preferential origin from a UK perspective, rendering them dutiable. Similarly, due to the integrated nature of supply chains, companies often source inputs from several countries and these inputs are consolidated into single consignments before they reach their destination. The requirements for proving that part of a consignment is eligible for preferences are onerous and deter importers from claiming preferential treatment. The UK could consider relaxing the “non-manipulation rule” and “direct transportation rule” by permitting goods benefitting from preference to be transported indirectly to the UK, and/or by expanding the scope of permitted operations to cover operations such as repackaging. In line with the WTO Ministerial Declaration on Preferential Rules for Least Developed Countries³ suggests the UK could refrain from requiring a certificate of non-manipulation for products originating in a least developed country but shipped across other countries unless there are concerns regarding transshipment, manipulation, or fraudulent documentation.

- **Reducing Financial Risks for Importers:** There is currently a lack of protection for importers seeking to import goods into the EU under preference in the event that preference is later disallowed. In particular, the so-called “good faith” defence under the EU’s Customs Code⁴ is extremely limited, which deters importers from importing from preference-receiving countries due to the risk that the EU customs authorities might detect an error in the claim for preference, and the importer would be liable to back duties and penalties for the customs violations even if they had acted in good faith. While this is largely designed to prevent tax evasion, the UK could ease the conditions for this defence while still maintaining sufficiently strict tax monitoring (see **Revis**, pg 47).
- **Product Graduation:** Under the GSP scheme, the EU requires that specific products ‘graduate’ out of preferences once they increase to a certain proportion of GSP imports in the EU market, a policy that is more about protecting EU producers than supporting developing countries. The UK could review and possibly completely remove product graduation criteria.
- **Expand Product Coverage and Include Services:** The UK could include services in its preferential scheme for least developed countries, going beyond its current WTO commitments, and take steps to improve the product coverage of the standard GSP and GSP+ schemes.
- **Country Graduation:** Country graduation is a perennial

² Although preference erosion is inevitable as the UK embarks on a series of FTA negotiations, preferences can be structured to minimise harm to preference-receiving countries including through the design of rules of origin (see discussion on rules of origin).

³ https://www.wto.org/english/thewto_e/minist_e/mc10_e/I917_e.htm

⁴ Article 119 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (as amended)

problem for preferential schemes. Graduation processes need to be developed in a fair and understanding way so that countries that progress beyond qualification for inclusion in the unilateral preference scheme are not ‘punished for their success’. For instance, preferential access for key sectors could be reduced gradually over a substantial period of time while targeted support could be given to preference-dependent industries to improve their competitiveness.

■ **Labour and Environmental Standards:** The UK could explore whether to condition the provision of preferences to adherence by developing countries to international labour and environmental standards. For instance, there is evidence that such conditions in the GSP+ have led to improvements in labour legislation in the Philippines and Pakistan, as demanded by groups in those countries representing workers.

■ **Tariff Peaks:** In a few cases, developing countries attempting to increase their processing capacity currently face tariff escalation in higher value products (see [Grady](#), pg 23). Though the impact of such tariff peaks on actual trade flows is debateable, the UK could identify and remove such tariff peaks.

A more challenging question is whether the UK government should look to *change the eligibility criteria* for unilateral preferences, targeting a different set of countries. While there was unequivocal support among participants for the UK replicating the EU schemes in order to help mitigate trade disruption, particularly the provision of unilateral preferences for least developed countries, there was less agreement on whether the UK should look to change the eligibility criteria.

Two options were discussed. The first suggestion is to provide preferences to all countries that are least developed and/or structurally weak, vulnerable and small economies. For instance, many small island nations do not qualify as least developed countries yet nonetheless face specific development challenges that provide strong grounds for providing preferences (see [Grady](#), pg 23; and [Campling](#), pg 17). A second option is to revise the eligibility criteria to focus on regional groups rather than individual countries. A particular concern with the EU’s current preferences is that they fail to support regional integration (see [Luke](#), pg 31). The UK could consider providing duty-free quota-free preferences to ‘least developed regions’ where a majority of countries are least developed, in order to support the development of regional value-chains.

Research is needed to evaluate the development gains that could be realised from changing country eligibility criteria and to explore whether schemes could be designed to be compliant with WTO rules. For more discussion of increasing country coverage for unilateral preferences, see [Grady](#), (pg 23) [Laurent et al](#) (pg 29), and [Lunenburg](#) (pg 34).

While all these moves merit serious analysis, participants noted that any changes to UK preferences post-Brexit would

result in exporters from developing countries having to comply with different sets of preferential schemes in order to access the UK and EU markets (see [Page](#), pg 43). This is an important consideration when determining which aspects of unilateral preferences to change or adjust: any modifications by the UK should generate sufficient gains to developing countries to outweigh the costs of complying with a new scheme.

3. Reciprocal Trade Agreements

The UK is party to more than 30 EU free trade agreements (FTAs) that include developing countries, including Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific countries. There is general agreement that these will cease to apply upon the UK’s exit from the EU and, as with the unilateral preferences, steps will need to be taken to minimise trade disruption. As the UK seeks to embark on the negotiation of new FTAs with countries including the United States and India, there are various options the UK can explore for ensuring that these FTAs do not obstruct, and even potentially support, sustainable development.

ADDRESSING TRADE DISRUPTION ARISING FROM EXPIRY OF EXISTING FTAS

The UK faces an immediate question of what to do with the EU Free Trade Agreements that it is party to, which includes both FTAs and the EPAs. Participants agreed that the UK government should urgently explore options for minimising trade disruption for developing countries, including through ‘transitional adoption’ of current FTAs. The ease with which this transitional arrangement can be implemented will depend largely on the type of deal reached between the EU and UK regarding exit from the common market. A conciliatory deal will make transitional adoption much easier and could facilitate the UK becoming a separate signatory to the agreements themselves.

However, there was widespread agreement among participants that the UK government should be very cautious about ‘cutting and pasting’ the EU’s Economic Partnership Agreements, particularly with African countries. The EPA process has been marred with controversy and has proved very divisive among African countries (see [Laurent et al](#), pg 29; [Luke](#), pg 31, [Keane](#), pg 25; [Mendez-Parra](#), pg 37; [Woolfrey and Bilal](#), pg 60; and [Razzaque and Vickers](#), pg 62). The EPAs have a variety of problems, including their current structure, which impedes integration among African countries. The application of several cumulation regimes in particular, as well as the difficulties linked to the administrative cooperation requirements, limit opportunities for value chain development between countries in different EPA blocs. Additionally, EPAs are perceived as hindering the development of domestic industries through increased competition

from European producers. While the agreements include provisions allowing for the protection of domestic (infant) industries, such measures are limited in duration and potentially complex to justify (see [Luke](#), pg 31).⁵

Brexit offers the UK an opportunity to take a different approach to trade with African countries. For instance, the UK could provide unilateral preferences to all African countries as the United States does (by providing Africa-specific preferences and seeking a WTO waiver); it could negotiate a single FTA with the African continent, building from the continental FTA that African countries are pursuing (see [Luke](#), pg 31); or it could negotiate 'modified EPAs' with ACP countries, taking a more flexible approach than the EU and dropping the most contentious clauses. For example, rendezvous clauses forcing countries to negotiate on services, public procurement, and investor protection or embedded MFN clauses.

As the UK government is unlikely to have the capacity to radically overhaul its approach towards African, Caribbean and Pacific countries in the short term, participants advised that the UK look to find a temporary arrangement with EPA signatory countries to minimise trade disruption, and which does not foreclose the pursuit of a much better trading relationship in future. The UK could explore offering temporary, unilateral preferential access to developing countries that currently have access to the UK market through FTAs and EPAs (see [Razzaque and Vickers](#), pg 62). While there are concerns that this may contravene WTO rules, the EU has used various Market Access Regulations to provide such access for some ACP countries since 2007, pending the signing and ratification of EPAs. Alternatively, the UK could provide unilateral preferences on a temporary basis for all developing countries experiencing a 'Brexit shock' while it works to negotiate new WTO-compatible trade arrangements with its trading partners (see [Stevens](#), pg 58). To explore which option to pursue in the medium-term, the UK government could enter a structured dialogue with African, Caribbean and Pacific countries to identify the option that would best support their development.

FUTURE TRADE AGREEMENTS

After Brexit, the UK will be negotiating new FTAs from a new position and this provides a valuable opportunity for the UK to negotiate future FTAs that support sustainable development, incorporating the lessons learned from previous FTAs.

Participants had a variety of specific suggestions about how the UK might approach future FTAs (see [Bellman](#) pg 15 and [Keane](#), pg 25, for further details on many of these points):

- Include a *unilateral and non-reciprocal MFN clause* in FTAs with small developing countries to ensure that they receive any concessions that the UK makes in subsequent FTAs, creating a dynamic trade regime for developing countries that evolves as the UK negotiates new agreements

- Develop a *model FTA that integrates a development approach* in all chapters for FTAs including developing countries, building into each chapter asymmetry, flexibility, and clauses that are designed to support sustainable development. To this end the UK government could conduct a systematic review of lessons learned from previous FTAs including dialogue with policymakers from developed and developing countries.
- Structure *FTAs with developed countries in ways that benefit developing countries*, including through diagonal cumulation across all FTAs and GSP schemes and extending mutual recognition agreements to third parties.
- Conduct *ex-ante Sustainability Impact Assessments* of all prospective FTAs before negotiations start to establish their likely implications for sustainable development. Participants noted that SIAs are often poor quality as they do not take a value-chain approach. The UK could pioneer a new approach to SIAs that reflect the aspiration to support developing countries to integrate into global and regional value chains.
- Conduct *ex-poste Sustainability Impact Assessments* All too often impact analysis is only conducted before FTAs are negotiated. The UK could adopt an approach of closer monitoring and evaluation to assess whether an FTA is having the desired impact on development and build in mechanisms to address shortcomings.
- Include *new cooperation schemes in FTAs* with developing countries. Such arrangements could range from institutionalised dialogue processes (e.g. on sustainability concerns), through mechanisms to promote technical assistance and capacity building in the form of aid for trade. Building on the recent precedent provided by the WTO trade facilitation agreement, the UK could explore the extent to which the implementation of certain provisions under new FTAs could be linked to the acquisition of capacity by the developing partner through technical assistance and aid for trade.

4. Sector Specific Issues

The workshop discussed the impact of Brexit on sectors of particular concern to developing countries: fish, sugar, garments, and agriculture.

FISH

Fish products are a major export for several developing countries. In addition to earning crucial foreign exchange, labour-intensive fish processing provides a vital source of private sector employment, and fish processing is one of the few success stories of industrial upgrading under historical EU-ACP trade preferences.

The UK is the EU's most important import market for canned tuna in volume and value and, in the context of Brexit, the

⁵ With the exception of Egypt and South Africa, all African countries lack the capacity to actually use trade defence measures.

UK has a 'duty of care' to continue to provide the conditions for the survival of export-oriented fish processors that are dependent on its market (see [Campling](#), pg 17). These countries include Ghana, the Seychelles and Mauritius, which export to the UK under EPAs. For these countries, it is particularly important that a solution is found for the UK to continue to provide duty-free quota-free access upon the UK's exit from the EU, when the current EPAs will cease to apply. The EU's current applied MFN tariff is 24% for canned tuna and, in the absence of duty-free quota-free access, there is the risk that these producers would no longer be commercially viable and a vital source of employment would be destroyed.

Beyond ensuring the continuation of duty-free quota-free access to the UK market, there are steps that the UK can take to improve market access for fish products under its GSP schemes and FTAs/EPAs. The most significant would be to simplify and relax UK rules of origin for fish and fish products. The EU's rules are overly complex and depend on the ownership of the fishing vessel rather than the location the fish are caught, with the result that processing facilities in preference-receiving countries are dependent on sourcing fish from EU vessels. A much simpler 'change of tariff heading' rule to confer origin could help stimulate fish processing and job creation. The UK could make such access conditional on exporting countries implementing international labour and environmental standards, learning from the recent experience under the Pacific EPA, where such conditions led to an improvement of labour rights in Papua New Guinea (see [Campling](#), pg 17, for details).

SUGAR

Sugar is another major export sector for many developing countries. Historically the EU has provided a high level of protection to its domestic producers and to select producers in African, Caribbean and Pacific countries. Reforms to the EU sugar market over the past decade have substantially reduced the level of protection, leading to a dramatic fall in the EU sugar price. Nonetheless, exporters in least developed countries and EPA signatory countries continue to receive preferential access to the EU and, by extension, the UK market.

Many smaller sugar producing developing countries in Africa, the Caribbean and Pacific are specifically dependent on the UK market for their export industries. The most urgent priority is to ensure that these preference-dependent countries continue to receive preferential access to the UK's market when the UK exits the EU. When it creates its own unilateral preference schemes, the UK could make changes to rules of origin to allow co-mingling of origin, to make it easier for preference-receiving countries to utilise preferences (see [de Pass](#), pg 21).

In the medium-term the UK will need to decide whether to continue to subsidise its own producers and whether to reduce MFN tariffs on sugar. The impact of such moves on preference-dependent exporters should be carefully examined. ACP sugar industries are seeking 'concrete and bankable

preferences' as they are concerned that under a fully liberalised trade regime they would be unable to export. In the event that traditional ACP sugar exporters to the UK do suffer loss of market share, there may be calls to support them during this adjustment. In this respect, valuable lessons can be learned from previous 'aid for trade' initiatives, which have all too often failed to have the desired impact of helping countries adapt. More detail on this topic can be found in [de Pass](#) (pg 21) and [Richardson](#) (pg 50).

GARMENTS

Textile exports to the UK from developing countries are integral to many markets and vulnerable economies and provide valuable jobs, particularly for women. The current EU preference regime on textiles is significant in allowing developing countries to export their products to the UK without facing competition from other major textile producers. Bangladesh and other garments exporters are concerned about the immediate disruption they could face from Brexit when GSP/EBA preferences and EPAs cease to apply. It is of vital importance that the UK continues to provide duty-free quota-free market access (see [Rahman](#), pg 45). Garments imports from Bangladesh typically enter the EU market in bulk at one port (usually Amsterdam) where they are then split for distribution to different EU countries, including the UK. Following Brexit there are concerns that imports will face new customs checks, increasing costs for Bangladeshi exporters. Analysis is urgently needed to find ways to minimise the imposition of such additional non-tariff barriers.

In the medium term, there are specific steps the UK can take to support the development of garments sectors, particularly in least developed countries like Bangladesh. The most important is to further simplify rules of origin, particularly by extending options for cumulation. The dangers of preference erosion in this area are significant in future trade agreements and effort should be made to maintain the current preference regime going forward. For more detail on the Bangladeshi case in particular, see [Rahman](#) (pg 45).

AGRICULTURE

Agriculture is of major interest to many developing countries. For the immediate future, it is likely that UK agriculture will stay highly protected as the UK takes on EU tariffs and continues to subsidise its farmers. Beyond ensuring the continuity of preferential access that countries currently have under unilateral preferences and EPAs, developing countries may be affected by negotiations between the UK and EU over the apportionment of the EU's tariff-rate quotas (TRQs). These TRQs significantly benefit larger agricultural exporters. In the case of country-specific quotas, countries currently receiving TRQs are likely to negotiate for an expansion and it is conceivable that third party exporters, including developing countries, will lose market share in the process. Careful analysis needs to be conducted to identify which country-product combinations might be adversely affected.

In the medium term the reduction of UK subsidies and removal of tariff-free quotas, as well as MFN tariffs could be beneficial for some developing economies (see [Mitchell](#), pg 39). Detailed analysis is needed to identify which reductions that would be most benefit developing countries. Participants noted that the UK's Food and Drink International Action Plan 2016–2020 focuses on how exports from the UK gain access to all potential export markets irrespective of their level of development. An aggressive export strategy could undermine developing country agricultural production. The strategy appears to have been drafted without the UK government considering the possibility of adverse implications for developing countries, which underscores the need for the government to integrate development into all elements of its external trade and other policies that have a direct bearing on trade relations with developing countries.

5. Non-Tariff Barriers

Non-tariff barriers are some of the most important obstacles to trade between countries, particularly in a world that is marked by historically low tariff rates. These non-tariff barriers can take the form of regulatory standards, customs procedures and costs, and rules of origin requirements. Whether these are product standards that firms in developing countries need to adhere to at the point of manufacture, proof of value-added contributions, or the customs checks required to clear the border, developing country exporters and UK importers must surmount them. Minimising the costs of complying with non-tariff barriers and creating a fair and functioning regime for developing countries should be important for any future UK trade regime.

PRODUCT STANDARDS

Product standards play an important role in facilitating trade – if a consumer does not consider a product safe to eat, he or she won't purchase it. The greatest challenge for developing countries is the cost of complying and proving compliance with product standards. To avoid increasing compliance costs, the optimal policy for developing countries post-Brexit is arguably a situation where the UK keeps its standards harmonised with those of the EU. Alternatively, the UK could establish an equivalence regime with the EU and provide mutual recognition of certification procedures that extends to third parties, so that exports from developing countries only need to be certified once.

Beyond this, participants had specific proposals for the UK to consider (for further details see [Luke](#) pg 31, [Mendez-Parra](#), pg 37; [Revis](#), pg 47 ; [Page](#), pg 43; and [Mitchell](#), pg 39):

- **Export Helpdesk:** The EU set-up an Export Helpdesk to provide guidelines to countries wishing to export to the EU market. The UK could work with organisations like the International Trade Centre (ITC) to introduce a similar Export Helpdesk upon leaving the EU that incorporates best practices from export information and promotion

services around the world.

- **Conformity assessment infrastructure:** The UK can also take important steps through its aid-for-trade programmes to help countries set up conformity assessment infrastructure, including testing laboratories, and train staff.
- **Revise unduly stringent standards:** In some instances, EU standards may be unduly stringent and serve to protect producers in the importing market, rather than ensure consumer safety. Post-Brexit the UK could consider changing specific standards, including sanitary and phytosanitary regulations for citrus black spot, which many argue are unnecessarily restrictive (see [Stevens](#), pg 58). The UK government could consult developing country governments and exporters to identify the standards that are, from their perspective, unduly restrictive and then assess whether they should be altered.

CUSTOMS AND ENTRY

Customs procedures are an important non-tariff barrier and facilitating trade with streamlined procedures is essential. Entry and exit procedures can often be cumbersome and efficient procedures are in the interest of UK business as well as foreign producers. Some participants expressed concerns that the imposition of new customs requirements on European goods could create backlogs, crowding out goods from developing countries.

There is a significant opportunity for the UK to reform its procedural systems as it invests to expand UK customs clearance facilities in the wake of Brexit (see [Keane](#), pg 25; [Mitchell](#), pg 39; and [Revis](#), pg 47).

- **Electronic certification:** The UK could emulate the EU's Registered Exporter (REX) online self-registration system, which has reduced costs for developing country exporters
- **Minimise documentation requirements for small consignments:** In line with the WTO Ministerial Declaration on Preferential Rules for Least Developed Countries the UK could minimize documentation requirements for small consignments.
- **Bulk consignments:** Many participants raised concerns about the impact of Brexit on bulk-import ports of entry. These are ports that currently handle bulk imports from developing countries that are subsequently distributed to other member countries of the EU. These include Amsterdam, Antwerp and London. There is concern that, post Brexit, consignments including products from developing countries that are split in EU ports of entry will then be required to undergo further customs checks to enter the UK, and vice versa. This could significantly increase costs for developing country exporters. The UK could negotiate a transshipment or in-transit agreement with the EU to provide mutual recognition of customs checks in order to reduce compliance procedures.

RULES OF ORIGIN

Exporters from developing countries face significant difficulties proving that their products qualify for preferential treatment and/or find the processes entailed so cumbersome that they prefer to export under MFN tariffs rather than claim preferential access. In general, the simpler the rules, the easier it is for exporters to prove compliance and the higher the utilisation of preferences. For this reason, the UK government should endeavour to keep rules of origin as simple as possible. As production chains become more complex, it is important that rules of origin are liberal in order to support preference-receiving countries to integrate into global and regional value chains.

In general, the UK government could revise the rules of origin for its preferential schemes to bring them in line with the WTO Ministerial Declaration on Preferential Rules for Least Developed Countries.⁶ The Declaration recommends, *inter alia*, allowing for the use of non-originating materials up to 75% of the final value of the product or adopting a simple change of tariff heading or change of tariff sub-heading in order to assess sufficient or substantial transformation. Indeed, Australia and Canada require recipient countries to add only 25 per cent local value for goods to qualify for duty-free access (see **Razzaque and Vickers**, pg 62).

Beyond this, the most significant general change that the UK could make is to adjust the rules on the cumulation of value added. While the EU does permit some regional and diagonal cumulation, the rules are often restrictive and this limits the development of value-chains among developing countries. Under the EU GSP scheme for instance, cumulation is only permitted with EU countries and specific regional groupings of GSP beneficiaries. The EU's EPAs provide for cumulation with the counterparty states and with other ACP countries that are party to an EPA. However, the UK could go further, permitting cumulation in respect of any products that can be imported into the UK duty-free regardless of origin (whether under MFN rates, GSP or EBA preferences) (see **Luke**, pg 31; and **Revis**, pg 47). The UK could also consider allowing diagonal cumulation of origin across all UK FTAs, which could result in major efficiency gains and directly benefit poorer countries (see **Bellmann**, pg 15). Some participants cautioned that significant productive capacity erosion could take place if countries under the unilateral preference scheme merely became final export hubs for other nations' production chains. The following memos provide further details on rules of origin: **Mendez-Parra** (pg 37), **Mitchell** (pg 39), **Woolfrey and Bilal** (pg 60), **Razzaque and Vickers** (pg 62), **Bellmann** (pg 15), and **Keane** (pg 25).

In deciding whether to make changes to rules of origin, participants noted that any changes that are inconsistent with EU rules of origin requirements could make it difficult to conduct re-export and re-import trade between the UK and EU of goods produced outside those two regions. This is an

important consideration when determining which aspects of the product rules of origin requirements to change or adjust, and a careful assessment will need to be made, in consultation with developing country exporters and UK importers, to ensure that the benefits of any changes outweigh the costs.

6. Aid for Trade

The UK is a major contributor to the European Development Fund (EDF) and to various aid-for-trade programmes. However, the current financial commitments towards the EDF will not necessarily be continued after Brexit and therefore allocation of that money is in question. Participants agreed that the UK should continue to allocate substantial development assistance to aid-for-trade programmes, particularly given the trade disruption and adjustment costs that developing countries are likely to face as a result of Brexit. Indeed aid-for-trade was originally designed to assist countries disadvantaged by new trade agreements and alleviate trade preference erosion in vulnerable economies, and this should be central to the UK's future aid-for-trade programming.

Participants noted the importance of learning lessons from past aid-for-trade programmes as they have often failed to make a meaningful contribution to development. Providing targeted support to specific industries may be the most effective form of aid-for-trade, and support given to the Caribbean rum industry was cited as a particular success. In general, it is important to ensure that all aspects of any aid-for-trade regime are the result of close collaboration with developing country governments, ensuring that any allocation for expansion of industry or capacity receives buy-in from the recipient country. The UK should also ensure that aid is 'untied' and is not explicitly or implicitly tied to the outcome of trade negotiations. Further ideas on the future of the UK's aid-for-trade programming can be found in **Laurent et al** (pg 29), **Luke** (pg 31), **Mendez-Parra** (pg 37), **Mitchell** (pg 39), and **Richardson** (pg 50).

7. Conclusion

Participants strongly agreed that the immediate priority for the UK government's development policy must be to minimise harm to developing countries arising from Brexit. A number of developing and vulnerable economies are highly dependent on the UK market for their exports and disruption of trade links with the UK would have severe repercussions including for jobs in leading export sectors. Replicating the EU's unilateral preferences and establishing a transitional arrangement for developing countries that are party to EU FTAs is of paramount and immediate importance. In negotiations with the EU, the UK should prioritise negotiating measures that will minimise non-tariff barriers for exports from developing countries that enter the UK through the EU and vice versa.

⁶ https://www.wto.org/english/thewto_e/minist_e/mc10_e/l917_e.htm

After Brexit the UK has an opportunity to take some innovative steps to ensure its trade policy supports development. This report has highlighted a series of policy options including measures to increase the utilisation rates of unilateral preferences, to ensure that development is at the heart of UK FTAs, and to support sectors that are particularly important for developing countries including fish, sugar, textiles and agriculture. The ultimate goal of post-Brexit trade policy should be to design UK trade, investment and aid policies to support economic transformation in developing countries through policies that go far beyond providing preferential access to the UK market for goods. This will require greater emphasis on supporting the development of value-chains involving developing countries, particularly at the regional level, and helping developing countries participate in the most dynamic aspects of these value-chains. It will also require an approach to trade negotiations that takes seriously the triple dimensions of economic, ecological and social sustainability, ensuring that trade agreements improve the conditions of workers at each node of the supply chain and promote trade in environmentally sustainable goods and services (see [Nissanke](#), pg 41).

In pursuing this agenda the UK government should increase consultation with developing country governments and exporters. At present there is no formal mechanism through for developing country governments to input into UK trade policy. Consultation will help ensure that policies are effective and utilised by the countries concerned. The UK government should also ensure that development priorities are reflected in all external trade policies and in government policies that have a direct bearing on trade relations with developing countries, including the UK's agricultural policy.

FUTURE RESEARCH AGENDA

The workshop identified and prioritised areas for further research and analysis. Research in these areas will help to elucidate the immediate impacts of Brexit and improve the evidence basis for future policy decisions.

The following areas were identified as priority issues for research:

- **Trade dependence:** Establishing which developing countries and specific export sectors that are most dependent on trade with the UK and hence most vulnerable to trade disruption
- **Preference dependence:** Establishing the utilisation rates of current UK preferences, and the countries and products that are particularly dependent on preferential access to the UK market. Identification of strategies to support adjustment in the event that the UK takes measures that lead to preference erosion.
- **Winners and Losers from Liberalisation:** Research is

needed into the specific developing countries and products that would gain and lose if the UK liberalises its MFN tariffs, reduces agricultural subsidies, and reduces its TRQs

- **Bulk Importers:** Analysis is needed to identify the products from developing countries that enter the EU in bulk consignments and are then split for export to the UK (and vice versa), and to identify and address any new barriers that these trade flows are likely to face following Brexit.
- **'Factory EU':** Analysis is needed to identify products from developing countries that are processed in other EU countries and then exported to the UK (and vice versa), and to identify and address any new barriers that these value-chains are likely to face following Brexit.

Further research is needed to inform the negotiation of UK FTAs, and improvements to UK preference schemes and aid-for trade programmes. More specifically:

- **Labour and Environmental Standards:** There is debate as to whether and how labour and environmental standards should be incorporated into trade agreements and preferential schemes. Research is needed on how trade policies can be used to promote labour and environmental standards, and the costs and benefits of such requirements for developing countries.
- **FTAs Supporting Development:** Systemic review of existing FTAs to identify specific clauses and provisions that would support sustainable development (or are detrimental to sustainable development and should be removed) and inform the formulation of the UK's model FTA. This should be conducted in close consultation with developing country governments.
- **Sustainability Impact Assessments:** A review of existing SIA practices to identify strengths and weaknesses, to inform the design of UK SIAs
- **Rules of Origin:** Consultation with UK importers and developing country exporters to identify the changes to rules of origin that would confer the greatest development benefits
- **Product Standards:** Consultation with UK importers and developing country exporters to identify the changes to product standards that would confer the greatest development benefits

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PLEASE NOTE

All memos represent the authors' personal views, and should not be interpreted as representing the policy or views of their respective organisations.

LIST OF PARTICIPANTS

Mr Christophe Bellmann

Senior Resident Research Associate,
International Centre for Trade and Sustainable
Development, Geneva

Dr Liam Campling

Senior Lecturer in Political Economy,
School of Business and Management, Queen Mary
University of London

Mr Philip De Pass

Chairman,
ACP/LDC Sugar Industries Group, London

Ms Penny Fowler

Head of Private Sector Team and Senior Private
Sector Policy Adviser,
Oxfam, Oxford

Mr Matt Grady

Policy and Advocacy Adviser,
Traidcraft, London

Ms Ursula Hermelink

Head of Programme, Non-tariff Measures,
International Trade Centre, Geneva

Dr Hauke Hillebrandt

Research Associate,
Center for Global Development, London

Dr Emily Jones

Associate Professor in Public Policy,
Blavatnik School of Government, Oxford

Dr Jodie Keane

Economic Adviser (Trade Policy Analysis),
Trade Division Commonwealth Secretariat, London

Mr Paul Keenlyside

Coordinator,
Trade Justice Movement, London

Dr Mostafa Abid Khan

Minister,
Bangladesh Permanent Mission, Geneva

Mr Edwin Laurent

Director,
Ramphal Institute, London

Mr David Luke

Coordinator of the African Trade Policy Centre,
UN Economic Commission for Africa, Nairobi

Mr Peter Lunenborg

Researcher,
Trade for Development Programme,
South Centre, Geneva

Ms Pooja Mall

Trade Policy Coordinator,
Oxfam, Oxford

Ms Liz May

Head of Policy and Advocacy,
Traidcraft, London

Dr Max Mendez-Parra

Senior Research Fellow,
ODI, London

Mr Ian Mitchell

Senior Policy Fellow,
Centre for Global Development, London

Mr Elia Mtweve

Minister Counsellor,
Permanent Mission of the United Republic of
Tanzania, Geneva

Professor Machiko Nissanke

Emeritus Professor of Economics,
Faculty of Law and Social Sciences, SOAS, London

Ms Sheila Page

Senior Research Associate,
ODI, London

Mustafizur Rahman*

Distinguished Fellow,
Centre for Policy Dialogue

Dr Mohammad Razzaque

Director,
Trade Division, Commonwealth Secretariat, London

Ms Jennifer Revis

Of Counsel,
Baker and Mackenzie, London

Dr Ben Richardson

Associate Professor in International Political
Economy,
Department of Politics and International Studies,
University of Warwick

Professor Fiona Smith

Professor of International Economic Law,
Warwick Law School, University of Warwick

Dr Chris Stevens

Senior Research Associate,
ODI, London

Mr Sean Woolfrey

Policy Officer,
Economic Transformation and Trade Programme
and Food Security Programme, European Centre for
Development, Maastricht, The Netherlands

Mr Conrad Copeland

Research Assistant,
Brexit Trade workshop; Rapporteur, University of
Bristol

* unable to attend

What We Know So Far: Brexit and Trade with Developing Countries

**Conrad Copeland and
Dr Emily Jones**

INTRODUCTION

This memo provides a review of existing studies on the impact that exit of the United Kingdom from the European Union will have on trade with developing countries. It reveals significant consensus among the researchers and organisations both on the effects of Brexit and the policy goals that should be pursued. However the existing studies focus on averting trade disruption and continuing aid for trade – relatively little attention is paid to thinking creatively about how UK trade policy can support development in the medium term.

THE EFFECTS OF BREXIT ON DEVELOPING COUNTRIES

There is a consensus in terms of the effects Brexit will have on developing countries. These impacts can be divided into two general categories: indirect trade effects and direct trade effects. The indirect effects consist mostly of the economic impacts due to the UK leaving the EU. Principally among these is one that has already to some extent occurred: the fall in the value of the pound. Most studies concur that the currency devaluation already experienced and that which is likely to occur in future will have significant impacts on the demand for the goods of developing countries by making them more expensive for residents of the UK to purchase. While this effect is general across all imports, it could be significantly felt by those developing countries which primarily export foodstuffs and clothing to the UK, goods for which substitutes may be readily available. Added to this is the possibility of a general demand slump due to a potential recession both in the UK and the EU more broadly precipitated by the actual removal of the UK from the common market. This would have a similar effect by dampening demand for imported goods, particularly those with higher demand elasticities which often come from developing countries. No comprehensive quantitative measure of these potential effects seems to have been undertaken although some illustrative examples suggest the magnitude could be substantial. A 10 percent drop in the level of the pound is expected to result in India losing export earnings of over US\$1.3 billion, Nigeria losing US\$800 million, and Botswana losing close to US\$500 million. Generally speaking, the impact would be significant for the many countries with in excess of 10 percent of their global exports going to the UK: Botswana at 54.4 percent, Belize at 22.7 percent, Seychelles at 19.3 percent, and many others (see Baldwin et al; Commonwealth Secretariat; Hove and Wakeford; Grady; Casero and Ruta).

The more direct effects of Brexit are related to the increase in or changes to trade barriers that will happen as a result of the UK leaving the single market. There is general consensus that all trade agreements negotiated on behalf of the UK with the EU as the signatory will cease to be in effect for the UK once Brexit occurs. As a result free trade agreements including the Economic Partnership Agreements (EPAs) between the EU and African, Caribbean and Pacific (ACP) countries, as well as the EU's Generalised System of Preferences (GSP) will no longer apply to goods imported into the UK. At present about 70 developing countries are eligible for the EU's standard GSP scheme, which provides preferences that are, on average, 3.5% less than most-favoured nation tariffs on two-thirds of product categories. Of these countries, 8 are eligible for the Enhanced GSP or GSP+, scheme, while just over 40 least developed countries are eligible for Everything But Arms.

Unless steps are taken by the UK government to replace these FTAs and the GSP schemes, the default scenario in this case is generally assumed to be a reversion to EU-level Most Favoured Nation (MFN) tariff schemes. It is calculated that this could add up to £1 billion in new taxes and tariffs on goods coming into the UK from developing countries. The incidence of the new costs vary with product category and country, but there is consensus that ACP countries, Commonwealth countries, and least developed countries will bear the largest burden. For example, Bangladesh could face a tax on imports of up to US\$275 million, India could face an import bill of over US\$130 million, and Pakistan would have an increase of close to US\$125 million (see Commonwealth Secretariat; Gidney and Roth; and Grady).

EXISTING POLICY PROPOSALS

The existing literature outlines a broad set of policy proposals in order to both reduce the adverse impact of Brexit on developing economies and take advantage of the situation to produce a policy structure more favourable towards developing countries. These proposals can be grouped into three general categories: 1) unilateral options; 2) negotiated trade agreements; 3) non-tariff barriers.

UNILATERAL TARIFF REDUCTIONS AND PREFERENCES

The most obvious unilateral option, and one that was discussed somewhat during the Brexit referendum campaign, is the idea of reducing UK tariffs across the board – effectively lowering MFN tariff rates to insignificant levels. However this would have the consequence of eroding the preferences currently received by developing countries, particularly least developed countries. While least developed countries already have duty-free, quota-free access to the UK market, under MFN liberalisation, so would the rest of the world. This runs the risk that more developed countries will out-compete least developed and other developing countries that currently have preferential access to the UK market. To date no study has quantified the impact of MFN liberalisation on developing countries..

An alternative approach is for the UK to provide unilateral preferences to developing countries either by replicating the EU's schemes or by creating new preferential schemes. However unilateral preferences have to be designed in ways that are consistent with WTO requirements or, if they are inconsistent, a WTO waiver would need to be sought (Grady; Commonwealth Secretariat; Razzaque and Vickers). In what follows, different schemes will have different levels of acceptability under WTO rules. Regardless of this, the consensus among the research and briefing papers is that it is better to proceed immediately and ask for forgiveness later – effectively prioritising policy action over WTO rules and legality. Most papers argue that it would be much easier to deal with any challenges brought to the WTO after the fact rather than seek waivers prior to policy implementation as this would take time that the UK does not have in terms of providing a seamless transition to the new regime for developing countries after Brexit.

Implementing unilateral trade preferences along the lines of the current EU everything-but-arms (EBA) and GSP systems is agreed by almost all the literature to be required in order to maintain current levels of market access for developing countries to the UK going forward. The EU's EBA programme is one of the most liberal schemes for least developed countries, so there are strong grounds for copying it, although modifications could be made. Eligibility criteria could be changed so that the scheme includes more countries (Baldwin et al; Grady), rules of origin could be made more liberal (Gidney and Roth) and services could be included.

The EU's standard GSP scheme has been tightened in recent years and fewer countries are eligible than was previously the case. The EU also has strict product graduation criteria under which preferential access to the EU market is withdrawn from specific product lines when a developing country is deemed to have become competitive. Rules of origin and product graduation criteria under the standard GSP and GSP+ schemes could be modified to expand market access for eligible countries and, as with the BA scheme, services could be included.

The benefit of replicating the EU's GSP schemes and making improvements to rules of origin and product coverage is that this would not directly contravene WTO rules. However once the eligibility criteria are altered, careful consideration needs to be made to ensure the schemes are WTO compliant. Moreover, any expansion of the eligibility criteria raises the possibility of preference erosion, particularly for least developed countries. The articles that advocate expansion of these unilateral programs (especially Baldwin et al; Grady; Gidney and Roth) do not address this potential effect.

FREE TRADE AGREEMENTS (INCLUDING EPAS)

To replace the EU's existing FTAs with developing countries would require negotiations and the principal hurdle identified in existing studies is the time it will require for the UK to negotiate trade agreements. To avoid trade disruption, the

solution often presented is for the UK to unilaterally reduce tariffs for countries with which the EU currently has an FTA (in contravention of WTO rules) and to then negotiate agreements (Razzaque and Vickers; Commonwealth Secretariat). While this is likely to be challenged at the WTO, it is not an uncommon practice – the EU has taken a similar measure during EPA negotiations. Another measure proposed by some studies is for the UK to join the existing FTAs (including EPAs) as a separate signatory. While this may be feasible it is uncertain whether it is even possible if the UK leaves the customs union; further there are questions as to if it is even desirable given the goal of improving access for developing countries and the inadequacy in many of the provisions within the current EPAs.

Proposals for negotiated agreements with developing countries suggest targeting countries and blocs in Africa and the Caribbean first, due partially to their proximity to the UK but also to the outsized burden Brexit may pose to those economies. Studies advocate that any new agreements should be simple and straightforward, preferably with similar access and rules for various blocs and groups. The impetus of this is to reduce the uneven application of market access between different groups of countries. The extension of capacity-building into any agreements is also emphasised with a push for the implementation and expansion of Trade-for-Aid schemes. A common thread is the need for any aid to assist in building export capacity in signatory countries, either through transportation infrastructure or supply infrastructure.

The effects of trade agreements with developed nations should also be front a centre in the minds of policy makers. There is broad encouragement to implement impact assessments for all new trade agreements, regardless of the potential partner, to determine any effects (adverse or otherwise) on existing trade relationships with developing countries. It is generally agreed that this should be a standing policy moving forward for all future trade negotiations involving the UK.

NON-TARIFF BARRIERS

The principal non-tariff barrier that is discussed in most of the literature is the issue of rules of origin. While the EU has different rules of origin for its unilateral preferences and its FTAs, these generally considered overly restrictive. Studies recommend that the rules of origin requirements be adjusted to 25% of value-added to products to qualify, from the current EU level of 30% to 50% depending on the product (some of which are required to be completely sourced in the exporting country), and that this be a cumulative amount. Effectively, the 25% of value added should be arrived at by additively considering the value added provided by any country eligible under the agreement – reducing the barriers to integration among developing country supply chains (Crawford et al; Baldwin et al; Stevens and Keenan). Currently, under EU rules, this is not a cumulative measure – it must be arrived at only through activities in the final country of export restricting the ability of multi-country production chains to export to the EU preferentially. A change to this would be a major

improvement on current rules of origin which do not provide benefits for integration among developing countries and in some case may dis-incentivise it.

Secondary to rules of origin are scattered proposals around customs checks and regulatory standards. These generally coalesce around the need to decrease processing time at the border through the reduction in the number of checks required for goods to enter the UK. This should be coupled with a relaxation of general regulatory standards which, it is argued, can be a hindrance to the importation of goods from developing countries due to an inability to meet certain arbitrary values in current standards.

CONCLUSION

The consensus within the existing literature on the effects of Brexit on developing countries and the policy options available to the UK is that Brexit without a plan for developing countries would be disastrous for many countries, particularly ACP and least developed countries. The policy options outlined in the existing literature lean heavily on the application of unilateral preferences both as a stop-gap measure in the short term and as a policy goal in and of themselves in the long term. This coupled with more consistent and more open reciprocal agreements create the broad strokes of currently recommended policy. Moving forward there is an opportunity to think about how UK trade policy can support development in other areas, including in services to investment, and the ways that UK trade policy processes are established to ensure that development objectives are prioritised.

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Making UK FTAs Work for Development

Christophe Bellmann

Senior Resident Research Associate, International Centre for Trade and Sustainable Development (ICTSD)

INTRODUCTION

This memo suggests possible ideas to ensure that future free trade agreements (FTAs) negotiated by the UK after leaving the EU, effectively contribute to the advancement of sustainable development considerations. After some reflections on how to manage the post-Brexit transition, the paper suggests possible ways to design model FTA provisions that would be supportive of development while fostering new cooperation mechanisms. In doing so the paper largely focuses on negotiations with developing countries, and particularly low-income ones, but also proposes some elements to be integrated in FTAs with more advanced trading partners.

MANAGING THE TRANSITION

The EU has nearly 30 FTAs already in place with developing countries, and several still under negotiations. By the time the UK goes through the Brexit process and defines the contours of its new trade relations with the European block, one can reasonably assume that more of these deals might be in place. Several of these FTAs, like the Economic Partnership Agreements (EPA), involve multiple countries including some of the world's poorest. At some point, they will have to be replaced by new bilateral agreements. Alternatively, trading partners could just go back to MFN conditions or, in the case of developing countries, trade under whatever unilateral preferential market access scheme the UK would provide. Assuming that the UK would want to maintain at least some of its FTAs, a first challenge will consist in managing a proper and predictable transition.

A critical milestone in this respect will be reached in 2019, when the EU and the UK finalize the "divorce procedure" triggered in March 2017 – assuming that the two-year deadline can be kept. At that time, the UK may not be bound anymore by the EU FTAs, even though legal interpretations in this area still diverge. On the other hand, one can reasonably assume that both entities would still be negotiating the nature of their new bilateral trade relationship and that the UK would have initiated discussions with the WTO membership at large, to agree on its new MFN schedule of commitments in areas such as tariffs, tariff rate quotas or domestic support. These negotiations will most likely take several years, opening a period of prolonged uncertainty. While in theory, the UK could immediately start bilateral talks with old or new trading partners, such negotiations will also take a significant amount of time and won't happen with all pre-existing FTAs at the same time. In practice, the UK will most likely give priority to its bilateral relation with the EU and its new WTO schedule

which will serve as a basis for all UK's future FTAs. In this context, FTA talks will at most focus on large trading partners like the US, not smaller developing countries.

To avoid potentially major disruption during this transitional period, the UK could announce that it will continue to apply existing FTAs and that it expects its trading partners to do the same. Should the trading partner in question decide to stop applying the FTA, both parties would then trade under WTO rules or any unilateral preferences the UK would want to provide. If both parties agree to continue applying the FTA, this should *guarantee existing market access conditions throughout the transition* until new agreements are in place. While this may raise legal questions from a WTO perspective, for example regarding the status of the transitional arrangement and how they should be notified, in practice the probability of any member challenging such agreements maintaining the status quo would be very low.

REPLACING EXISTING AGREEMENTS

The renegotiation process itself should be informed by *ex-post sustainability impact assessments of the previous FTA*, highlighting in particular possible areas for improvements from a development perspective. An easy option might consist in replicating as much as possible the provisions of the previous agreement but this might not always be feasible nor desirable. Previous FTAs were drafted taking into account the offensive and defensive interests of the EU as a block. In practice, sensitivities on the UK market may not be the same as those prevailing for the rest of the EU. Imports of citrus fruits for example, may be sensitive in some Mediterranean countries but not in the UK. Secondly, goods and services are increasingly traded in the context of complex value chains. Products from developing countries are rarely imported directly to the UK with some of them transiting through other ports like Rotterdam or being transformed in the EU before reaching the UK. In this respect maintaining the same market access conditions for developing countries will largely depend on the future arrangements that the UK will establish with the EU after Brexit and the extent to which such arrangements will affect existing value chains. In light of these considerations, the main objective when replacing existing FTAs may not necessarily be to replicate the exact same provisions but rather to guarantee that the agreement results in *equivalent and no less favorable export opportunities for developing countries* than the ones prevailing previously.

Finally, given that several of these FTAs are relatively old and that other deeper integration agreements are likely to be concluded in the future, the UK could usefully *integrate a unilateral and non-reciprocal "MFN clause" in its agreements with low-income countries*. Such clause would automatically extend to them any more favorable treatment granted subsequently to another trading partner. Beyond tariffs, this clause would be particularly useful in areas such as rules of origin, services market access or new issues like digital trade where future innovations in UK FTAs could benefit low-income countries.

INCORPORATING SUSTAINABLE DEVELOPMENT FRIENDLY PROVISIONS BASED ON BEST RTA PRACTICES

As the UK engages in the renegotiation of existing FTAs or the conclusion of new ones, it will most likely develop its own set of “model provisions” to be incorporated under different chapters, just as the EU, the US or EFTA countries (European Free Trade Association) have their own model provisions in a number of areas. These might be adjusted depending on the trading partner and evolve over time but, to the extent possible, they should reflect sustainable development considerations. Instead of reinventing the wheel, the UK could build on existing precedents, tried and tested rules, and innovative solutions borrowed from regional or bilateral trade agreements. This could be achieved through a *systematic review of best practices and lessons learned from FTAs which have worked as laboratories of new trade disciplines*.

Such a process should *involve dialogues with relevant stakeholders and policy makers from both developed and developing countries*. It should discuss actions to be undertaken prior to the negotiations (e.g. a review of best practices in the design and conduct of ex-ante sustainability impact assessments integrating labor, environment, gender and human rights considerations), but also in the design of substantive disciplines, and mechanisms for implementation, monitoring or dispute settlement. Topics to be addressed could include lessons learned from sustainability provisions but also development friendly approaches to rules of origin, regulatory cooperation, non-tariff measures, e-commerce, SMEs, services, intellectual property rights or investment provisions to list just a few. The UK should take advantage of the next two years to develop this model through a participatory process involving think tanks, civil society actors and development partners. A *mechanism like the RTA Exchange* (www.rtaexchange.org) created by ICTSD and the IDB could serve as a platform to undertake such a review and dialogue process.

FOSTERING NEW COOPERATION MECHANISMS

Besides traditional trade rules and market access commitments, the UK could usefully envisage new cooperative schemes under its trade agreements with low-income countries. Such arrangements could range from *institutionalised dialogue processes* (e.g. on sustainability concerns), through *mechanisms to promote technical assistance and capacity building* in the form of aid for trade. These could provide effective means to overcome supply side constraints, comply with stringent standards and sanitary and phytosanitary measures, reduce the cost of doing business, or simply facilitate the implementation of new obligations. Building on the recent precedent provided by the WTO trade facilitation agreement, the UK could explore in particular the extent to which the implementation of *certain provisions under new FTAs could be linked to the acquisition of capacity by the developing partner through technical assistance and aid for*

trade. This could particularly apply to deeper integration provisions or disciplines in new areas where developing countries suffer from limited institutional or regulatory capacity such as trade in services or e-commerce.

ADDRESSING THE DEVELOPMENT CONCERNS OF NON-PARTIES

Making UK FTAs work for development also implies that negotiations with more advanced trading partners do not undermine development prospects in low-income countries. If FTAs become the preferred avenue for the UK to craft trade disciplines, this might further reduce the momentum for multilateral negotiations which usually remain the preferred negotiating avenue for most low-income countries. In this respect, a strong commitment from the UK to privilege as much as possible a multilateral approach would not only reduce the burden associated multiple bilateral negotiations, it will also be in the interest of most developing countries with limited negotiating capacity.

Another concern is whether deep integration initiatives among large trading partners might set rules that become *de facto* templates for global standards, and ultimately raise the bar too high for low-income countries to comply. This might be the case if the UK concludes deep integration FTAs with large trading partners such as the US. To address this concerns, the UK might want to *foster in its FTAs, inclusive systems by designing disciplines that also incur benefits for third countries* and particularly low-income ones. For instance, a mechanism allowing for *diagonal cumulation of origin across all UK FTAs* could result in major efficiency gains and will directly benefit poorer countries. Similarly, *extending the benefit of mutual recognition to third countries* would enable exporting developing countries to access both the UK and other large market like the EU or the US if they comply with the requirement of either one of them. When designing systems for regulatory cooperation aimed at removing unnecessary duplications – say between the UK and US regulations – such mechanisms could also involve *actors from the whole value chain including developing country providers* present at different stages of the production chain.

Taking into account non-parties concerns and avoiding negative effects on poorer countries will not happen automatically. Identifying such opportunities could be facilitated if for example, the UK would systematically *commission ex-ante assessments of the potential implication of a future FTA on third parties and particularly low-income countries*.

Fish Product Preferences for non-LDCs and Reforming Rules of Origin as a UK Trade-and-Development Opportunity

Liam Campling

Senior Lecturer in Political Economy,
Queen Mary University of London

FISH TRADE PREFERENCES AND DEVELOPMENT

The transformation of fish into fish products in developing countries can scale up and expand opportunities for the creation of work where there is high under- and/ or unemployment (UNCTAD 2012). Upgrading in fisheries value chains is very often tied to preferential access to principal markets, especially the EU, Japan and USA. This is because these countries protect domestic fish processing industry behind high tariff peaks on finished product – as high as 24% in the EU and 35% in the USA (Campling 2016).

Fish processing is one of the few success stories of industrial upgrading under historical EU-ACP trade preferences. In addition to earning crucial foreign exchange, labour-intensive fish processing provides a vital source of private sector employment; as can be seen from the snapshot of direct employment in ACP tuna processing in the late 2000s in Table 1. In the aggregate, small vulnerable economies (SVEs) in particular have seen an improvement in their relative positioning in global value chains in fish products, moving from a share of the global trade of 5.2 per cent in 2003 to 6.5 per cent in 2013 (Lanz and Werner 2016). EU trade preferences are fundamental in this success.

Diseconomies of scale and high transaction costs in SVEs mean that comparative advantage ‘is not enough’, and, in the final analysis, ‘free trade could mean no trade for these economies’ (Winters and Martins, 2004: 348). Given that the UK government has signalled a strategic emphasis on trade and job creation (DfID 2017), it would presumably not want to follow Winters and Martins’ policy suggestion of providing aid to prop-up SVEs should preferences be withdrawn.

TABLE 1

Direct employment in ACP tuna processing, late 2000s

Fiji	800
Ghana	2,000
Kenya	c.300
Côte d’Ivoire	c.1,500
Madagascar	c.1,400
Mauritius	2,700
Papua New Guinea	c.7,000
Senegal	2,200
Seychelles	2,600
Solomon Is.	800

Source: Campling (2012)

WHY SHOULD THE UK CARE?

The UK has a duty of care to continue to provide the conditions for the survival of export-oriented fish processors that are dependent on its market. This includes countries with historical links to the UK, such as developing Commonwealth countries with low levels of economic diversification, and countries that signed Economic Partnership Agreements (EPAs) with the expectation of continuing preferential access to UK markets alongside the other 27 EU member states. In terms of the UK’s national interest it is important to honour these commitments and harness and take-forward long-term historic relationships; for example, the UK’s top three suppliers of canned tuna are all members of the Commonwealth (see Table 2).

The UK is the EU’s most important import market for canned tuna in volume and value. It is a relatively high value market due to oligopolistic rent seeking by only two brands and the ‘big four’ supermarkets (Campling 2012). The UK is also a world leader in the development of sustainable procurement policies by big retail (Havice and Campling 2017), private standards that UK-centred exporters have invested heavily to comply with.

Again in terms of the UK national interest, given the country’s dependence on imported food, it is important to ensure a diversity of sources of supply, especially give the risks of more expensive food imports from the EU. The share of the top 10 countries supplying the UK with canned tuna in Table 2 of total UK imports was ~99% in 2016 and 2011. This indicates UK exposure to supply shocks. To erode fish product preferences through, for example, unilateral liberalisation, would almost certainly divert trade to the UK away from the IEPA and GSP+ countries and to the three Southeast Asian suppliers in Table 2⁷. To depend solely on exports from

⁷ We can predict that these countries would benefit from trade diversion should GSP+ or IEPA partner countries no longer have preferential access to the UK market by using historical indicators. According to interviews with EU and Thai tuna industry representatives, EU quota at 12 percent duty on canned tuna (provided as a compromise for the Cotonou Waiver after a WTO dispute in 2003) was filled within days (i.e. the product

Southeast Asia would mean a reliance on countries with low levels of national raw material supply outside of their waters (i.e. Thailand is depend on imported fish and Philippine industry relies increasingly on access to Pacific ACP waters), which in the context of intensifying international struggles for control over fisheries, may marginalise the UK market. It is also the case that there are considerable reports of poor corporate governance in the Indonesian, Philippine and Thai tuna industries, especially around serious labour abuses (McDowell et al. 2015; Verité 2016).

TABLE 2

UK import of canned tuna from selected countries, 1996–2016 (in million GBP)

	Tariff Regime	1996	2001	2006	2011	2016
Ghana	IEPA	11.1	27.3	21.7	34.7	65.1
Seychelles	IEPA	6.5	37.8	50.6	50.0	57.5
Mauritius	IEPA	13.3	35.5	42.4	54.2	47.3
Thailand	GSP	34.3	24.9	22.6	46.6	32.9
Ecuador	GSP+	0.9	10.9	11.2	29.9	24.7
Philippines	G S P / GSP+	12.9	6.5	11.8	17.5	24.3
Indonesia	GSP	7.3	4.6	0.9	4.0	15.9
Ivory Coast	IEPA	0.1	0.4	..	0.3	5.3
Papua New Guinea	IEPA	..	0.2	6.7	3.6	4.1
Maldives	EBA/GSP	7.0	2.9	2.8	2.1	0.9
Total imports all countries		131.5	160.5	183.3	246.4	281.6

Source: HMRC (2017)

The big policy conundrum here is that the countries in Table 2 that are supplying canned tuna to the UK under the GSP+ and IEPA are all non-LDCs, and thus will not benefit from the UK commitment to continue duty-free, quota-free market access to LDCs (i.e. via an equivalent of the Everything But Arms initiative). Instead, given that the UK is not a signatory to the IEPAs, there is a risk that these non-LDCs will be met with a WTO applied tariff of 24% (bound at 25%) which will either divert trade to non-UK markets in the EU and/ or undermine the commercial viability of these producers, thereby destroying a vital source of employment in SVEs. One option, is for the UK to adapt an equivalent of the USA's AGOA because waivers have already been granted at the WTO (Baldwin et al. 2017), but this would exclude Papua New Guinea and other Pacific Island Countries such as Fiji, which was historically a major supplier to the UK (Havice and Campling 2013).

WHAT IS THE PROBLEM WITH EU FISHERIES RULES OF ORIGIN?

Insufficient supply of fish that is compliant with preferential rules of origin (RoO) has limited preference utilisation by ACP countries, undermining the achievement of vital economies of scale. This is because EU RoO are based on 'wholly obtained' criteria which is defined not by where a boat is fishing (within a recipient country's exclusive economic zone for example, see Figure 1), but by who is fishing as defined by flag and, crucially, ownership. The problems for investors in the ACP

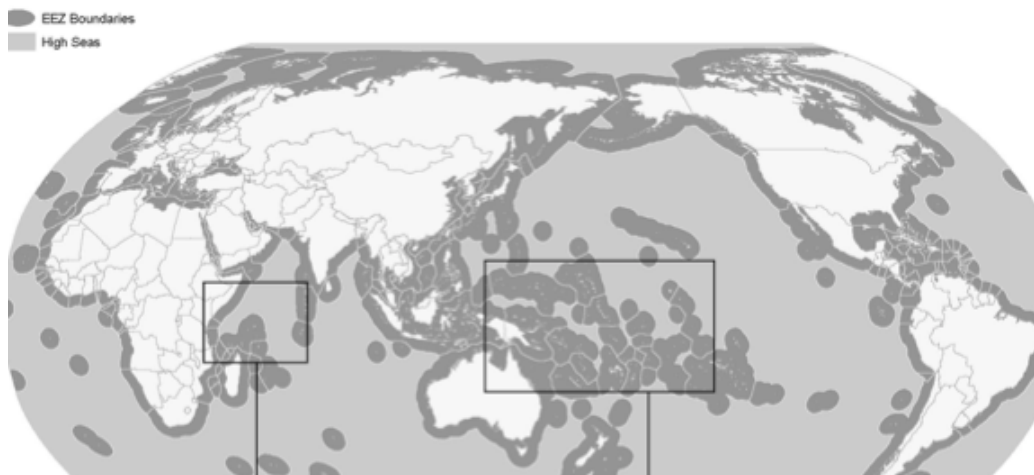
are that industrial fishing boats are expensive (a single tuna purse seiner costs over US\$20 million and at least four boats are needed to supply a small processing plant) and competitors are heavily subsidised (e.g. the EU and East Asian fleets). For processors based in SVEs in particular, which have small private sectors and fiscally squeezed states, this has meant a dependence on fish supplied by EU boats. It is in this sense that it is argued that EU preferential RoO for fish products were designed with two aims: to ensure that the preference receiving country is not used to transship a third country's product and

to provide a captive market to European fishing industry for the sale of their fish (Campling 2015b).

This developmental anomaly in EU trade policy has long been recognised by the UK government. When the House of Commons assessed the fisheries preference system in the early years of the Lomé Convention it concluded that it "seems to bias choices of industrial development and technology transfer in favour of the EEC" (UK Select Committee of the House of Commons on Overseas Development as cited by Ravenhill 1985: 169). Some decades later, the UK Commission for Africa stated that EU fisheries RoO can be 'applied in a deliberately obstructive manner' and are 'taken to ludicrous extremes' (2005: 55–56).

was warehoused prior to the opening of the quota and pushed through customs on the day it commenced). Further, according to one Thai industry representative: 'There's no business in the EU for Central American countries during the Thai quota period because our imports take over'. This indicates that even with a 12% additional cost, Southeast Asian exports are more competitive than the IEPA and GSP+ countries in Table 2, demonstrating the latter sets of countries' commercial sensitivity to shifts in the trade regime.

FIGURE 1.
Exclusive economic zones in the global ocean



Source: Campling and Havice (2014)

There is also the complicated issue of the *interlocking nature of the EU fisheries trade regime and apparent symbiosis with ACP-based interests*. The argument, made by representatives of the European Commission, is that if the ACP had been successful in liberalising rules of origin across the board in Economic Partnership Agreement negotiations, then it would have negatively affected a crucial economic pillar proping-up the survival of the EU DWF. If this was the case then the commercial logic (and associated lobby power) for maintaining tariff peaks would decline with it (see also, Pearson 2007). The outcome might have been the liberalisation of EU tariffs and the immediate collapse of factories in preference-dependent ACP countries because there would have been little justification within the EU for maintaining protective tuna tariffs, especially given the assumption dominant in most EU policy circles (e.g. DG Trade) that high tariffs have negative effects on consumer prices.

DESIGNING DEVELOPMENT-FRIENDLY UK RULES OF ORIGIN

The EU itself recognises the commercial obstruction of its RoO (DG Trade 2007). This is reflected in derogations under IEPAs to the RoO for a pre-determined volume of raw material. But the demand by processors for tuna easily outstrips these quota. For example, the East and Southern Africa (ESA) grouping negotiated an automatic derogation in its IEPA with the EU of 8,000mt of canned tuna and 2,000mt of tuna loins. This was considered a victory, as it gave the three tuna processing ESA countries (Madagascar, Mauritius and Seychelles) the same volume of 'non-originating' supply as that previously shared amongst the entire ACP group. However, even this volume was not seen as adequate and the ESA group has therefore been seeking an increase in their automatic derogation to 30,000mt as part of negotiations for a comprehensive EPA (SmartFish, 2012).

The case of the Pacific IEPA is also illustrative. In the EPA negotiations between the Pacific ACP region and the EU, the Pacific secured 'global sourcing' RoO for processed fish

exports. Technically, this involves a change in tariff heading to confer origin – in this case from HS03 to HS16 – as this indicates substantial transformation. This negotiated outcome was a recognition of the historically low volumes of EU originating fish available to PACP-based processors, which were widely recognised as a major constraint on preference utilisation. It was even noted in the text of the PACP IEPA – that there was 'insuffi-

cient wholly-obtained fish to meet on-land demand [given] the very limited fishing capacity of the Pacific States' fishing fleet' (PACP-EU IEPA, Protocol II, Article 6.6(a)). A study for the European Parliament (2012) estimated the new rule would provide the conditions for the creation of thousands of new jobs. Because of concerted opposition to this concession by the Spanish tuna industry, DG Trade emphasised that this was an exception and not a precedent.

The liberalized rule of origin in the Pacific IEPA was tied to a review clause after three years of implementation of the new rule to assess its developmental and environmental impacts. The official review identified weaknesses in relation to core ILO conventions (Hamilton et al. 2011), which the PNG government agreed to redress in February 2012. In this context, the International Transport Workers' Federation worked with representatives of over 5,000 PNG fish processing workers to shift membership from 'company unions' to the independent national Maritime and Transport Workers Union, which was an important gain for workers (Campling and Havice 2013).

This outcome suggests an opportunity for the UK. In order to fulfil its duty of care, ensure a diversity of suppliers of fish products and to support socio-economic development in SVEs, the UK could design development-friendly RoO for the export of fish products from vulnerable, non-diversified non-LDCs. Here the UK could incorporate implementation of labour standards as a condition of the trade preference and development-friendly RoO, which would be monitored intermittently. The justification being that, if the jobs created by trade preferences are not of a reasonable quality, then the quantity of FDI becomes an irrelevance.

Decent work and the learning rents created by the preference, will provide the conditions for SVEs to potentially advance the competitiveness of onshore economic activities, which, crucially, uses local natural resources which are normally otherwise simply extracted and processed elsewhere.

We know what might happen if the UK does not act. The Maldives was a major beneficiary of the EBA. Duty free access to the EU market supported two canned tuna factories supplied by a huge local small-scale fleet. However, Maldives graduated from LDC status in 2011 and was removed from the EBA in 2014. Without this preference its exports became less competitive, evidenced by a massive drop in exports after 2014 (see Table 1.2). Instead, Maldives is exporting more of its fish to Thailand for export-orientated processing to the EU (Atuna 2014). According to the logic of comparative advantage, this is the most efficient outcome as comparative costs are minimised. However, given that tuna processing is a large employer of low-skilled labour and the Maldivian economy is yet to substantially diversify beyond tourism, it is unclear where the next round of jobs will come from.

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How can UK Trade Policy Sugar remain a pivotal crop in the development of rural economies in ACP/LDC countries.

Philip de Pass

Chairman, ACP/LDC Sugar Industries Group

It is uniquely suited and extremely resilient to the climatic conditions that prevail in tropical regions, is a large employer in rural areas and has proven to be sustainable for decades and even centuries.

Large scale sugar production bridges the divide between an agricultural and an industrial economy by bringing the benefits of industrialisation and its associated infra-structure development to rural communities with significant multiplier effects in that economy. In many cases, the sugar industry is a generator of renewable energy and typically funds the provision of healthcare, education and other benefits to the communities in which it operates as well as being a source of tax and foreign exchange revenue for the wider economy and the government. It also generates a consistent source of cash for small scale farmers allowing them to develop and grow without the need to have integrated and sophisticated routes to markets and financial systems. Preferential access for sugar to the UK and the EU markets has been the single most important factor in sustaining and developing sugar production in many ACP/LDC states. The expansion of access to the EU, through the EBA initiative, and the removal of quotas on ACP Sugar in 2009, were a catalyst for the expansion of sugar production in low cost sugar producing countries such as Belize, Malawi, Mozambique, Swaziland and Zambia. The sugar industry, therefore, has an important role to play in achieving the UN's "Sustainable Development Goals 2015 – 2030".

This development relied heavily on very large investments from commercial companies together with borrowing from international lenders. It would have been more difficult for this expansion to materialise without the degree of certainty provided by access to a preferential market and the ability to contract with a reliable commercial counterparty, particularly for those countries with small domestic markets. Banks would have been more reluctant to lend against a sales/revenue profile based on volatile world markets or local currency receipts.

In summary, trade, and specifically preferential trade, has proven to be an important development instrument for sugar industries and for the economies in which they operate.

Preferential trade in sugar is an extremely efficient way of transferring benefit to the rural economy in developing countries. This is not about the UK giving a subsidy to developing-nation sugar growers but about giving recognition to the role that such industries/growers play in their national/rural economies and helping them compete fairly by offering preference to a world market, a world market that is distorted by direct and indirect subsidies in the largest producing countries. The UK has led the world in its aid commitments and it can do so again with its trade policy.

UNILATERAL PREFERENCES

When the UK acceded to the EU in 1974, it helped to negotiate the Sugar Protocol for a number of ACP countries. The Protocol provided a preferential, guaranteed price for a fixed amount of sugar, "indefinitely". With subsequent reforms of the EU CAP and its sugar regime, this arrangement was replaced in 2009 by EPAs and a simple duty-free and quota free access arrangement offered to ACP/LDC countries. However, the increase in supply from ACP/LDC, new FTAs and quotas and from EU beet producers with the 2017 reforms, has eroded both the value of the duty preference and the demand for imported sugar. EU beet producers continue to benefit from subsidies such as the single farm payment and, in some cases, "Voluntary Coupled Support". Most ACP/LDC governments do not have the means to provide equivalent support.

Thus, ACP Sugar is calling for the UK to implement trade policies that provide ACP/LDC sugar producers with:

1. Continued duty-free access for raw or refined sugar
2. A duty and market structure which establishes a preferential price for ACP/LDC sugar producers

The nature of preference is that value is created by a combination of a differential duty structure and the matching of supply volumes to the market requirement. Thus, in the case of sugar, a simple rolling-over or expansion of existing EBA/GSP schemes could lead to a surplus of available sugar and erosion of any preference. Consequently, a lack of any preference would leave ACP/LDC suppliers competing directly with exports from Brazil, Thailand and other major suppliers and make future development harder to achieve.

EU rules of origin concerning sugar have evolved from the desire to protect a sugar market that was heavily managed for many years and an unwillingness on the part of the EU Commission to police this area of policy. ACP Sugar would advocate that the UK Government should implement provisions for:

1. sugar from origins with the same preferential status to be co-mingled in the same shipment
2. sugar from one preferential origin processed and or packed in another preferential origin with the same preferential status without having any effect on its duty-free status

MAKING UK FTAS WORK FOR DEVELOPMENT

ACP Sugar argues that the UK should recognise that sugar is a sensitive product requiring special and differential treatment. It has been the vehicle for economic development and growth extended by the EU/UK to ACP countries over many decades and the UK sugar market has always been a key part of the ACP/LDC countries' preferential access to the EU. Thus, the inclusion of sugar in other FTA's that the UK aims to establish would undermine the long term developmental support extended to ACP/LDC countries via the trade in sugar.

It may be that preferential access for sugar for ACP/LDC countries could be dealt with as part of a separate negotiation/agreement? This would facilitate a smooth transition and continuity of supply after 31 March 2019.

ADDRESSING NON-TARIFF BARRIERS

ACP/LDC sugar is currently imported into the EU both as a raw product for refining and as an unrefined and refined product for direct human consumption. Exporters to the EU accept that they are obliged to comply with both EU law and customer requirements. There are currently some restrictions on who can import sugar that should not be included in future UK regulations, and, given that there is an underlying requirement for imported sugar, the UK government should resist imposing any labelling or other new standards that would be unnecessarily onerous or impossible for third country suppliers to meet.

Unilateral Preferences: Options for improved market access

Matt Grady

Policy and Advocacy Advisor, Traidcraft

Brexit creates uncertainty around the conditions under which developing country producers will be able to trade into the UK market. As the government formulates its proposals it must, at a minimum, ensure that no developing country partners are worse off as a result of Britain's withdrawal from the EU. However it should take a more ambitious approach by seeking to go further and adopt trade policies which drive sustainable development.

A reasonable approach would be for the government to seek to replicate existing EU preference arrangements operated under the GSP, GSP+ and Everything but Arms (EBA) non-reciprocal preference schemes as an interim measure, whilst seeking to introduce more ambitious improvements in the longer term.

For countries currently party to Economic Partnership agreements (EPAs) or emerging countries where an FTA may be appropriate, it will be a significant challenge for the government to have measures in place from day 1. The UK is unable to negotiate trade agreements with third countries while still a member of the EU and the process to bring treaties into force would likely create delays and disrupt trade. Therefore the government should be investigating the option to seek a waiver at the WTO to enable it to temporarily continue to offer duty-free, quota-free access into the UK on a non-reciprocal basis for imports from countries currently covered by EPAs until such times as FTA negotiations can be conducted and the terms of EPAs improved. For example, by removing rendezvous clauses covering controversial issues.

BESPOKE PREFERENCE SCHEME

In order to introduce a preference scheme that improves on the EU measures and establishes a 'best in class' preference scheme for sustainable development the government could consider a number of options. It could improve rules of origin to increase regional cooperation and value addition capacity, it could extend complete duty-free, quota-free preferences to a wider group of countries to ensure that both the goods currently traded and those offering greater developmental potential were included. The development of comprehensive economic vulnerability criteria to establish eligibility for preferences would enable the UK to lead the world in replacing the inadequate blunt instruments such as income classification, LDC, developing country or lower-middle income country labels etc.

EXTEND PRODUCT COVERAGE

The preferential market access offered by the EU includes a wide variance of product coverage depending on the applicable regime.

Even though the EU's GSP scheme covers approximately 66% of product lines, only around 28% of goods, by value, imported into the UK from developing countries receive duty-free access for products with a higher than zero MFN tariff. This increases to around 88% for the GSP+ scheme but there remain important gaps which have largely been created to protect EU competitive interests which the UK doesn't hold. These gaps must be identified by government and adjustments to the UK preference arrangements made to improve product coverage.

Developing countries attempting to increase their processing capacity currently face tariff escalation in higher value products. For example, unroasted green coffee beans do not attract a tariff but roasted coffee beans attract an ad valorem tariff of 2.6% under the GSP scheme while unroasted decaffeinated coffee attracts a tariff of 4.8%. The tariffs are even higher when the EU's MFN tariffs are applied with 7.5% duty applied to roasted coffee and 8.3% for unroasted decaffeinated coffee.

A bespoke preference scheme developed by the UK could improve upon the EU's approach by removing the tariffs within the GSP and GSP+ for a wider range of products or by combining the regimes into one simpler scheme whilst improving the developmental prospects of eligible countries. It could extend the product coverage of the Everything But Arms initiative to a wider group of countries, including non LDCs. This would enable the goods of most value to developing countries to benefit from waived tariffs and provide opportunities for diversification in the future by eliminating tariff peaks and escalation.

IMPROVE ELIGIBILITY CRITERIA

In order to comply with WTO rules eligibility for a GSP scheme must be based on objective developmental criteria. There is currently no universally adopted method to adequately identify developing countries and therefore those most in need of preferential market access. The most commonly utilised classifications such as least developed country, low-income or lower-middle income country, for example, do not fully capture all developmental metrics and arbitrary assessments based on income classification are outdated. A better approach for the UK government to adopt would be to develop economic vulnerability criteria to establish eligibility for preferential market access. In this endeavour the UK would not entirely be starting from scratch. Economic vulnerability criteria is utilised by the EU in the administration of its GSP+ scheme and the United Nations Conference on Trade and Development (UNCTAD) pays special attention to structurally weak, vulnerable and small economies (SWVSEs). These methodologies consider a number of factors to assess vulnerability including the size and diversity of an economy,

health and literacy rates, domestic infrastructure and susceptibility to natural disasters. Utilisation of vulnerability criteria enables a wider range of developing countries to be considered for eligibility including LDCs, poor non-LDCs, land-locked developing countries (LLDCS), small island developing states (SIDS) and other structurally weak and vulnerable economies that may otherwise be excluded based on income classification alone.

The UK government could adapt existing vulnerability methodology as the basis for its own bespoke scheme to ensure that the benefits of a preferential market access scheme are directed towards the most vulnerable countries. This would clearly require some government resources but would be an opportunity for the UK to lead the world in establishing a modern, fit-for-purpose eligibility criteria that could more adequately assess need.

We are not proposing wholesale adoption of the EU vulnerability criteria or UNCTAD SWVE methodology, but rather highlighting the potential merits of taking an approach that is based on a more sophisticated analysis of economic vulnerability. This could be coupled with a graduation mechanism to ensure that preferences are responsive and continue to be well-targeted.

In order to strengthen regional integration and cooperation the government could also explore the potential to extend preferences to wealthier developing countries in a customs union with eligible countries. Facilitating this regional integration and cooperation would help create cohesive trading blocs, enabling larger economies to act as a catalyst for smaller partners to increase trade, exports and broader development. Clearly this would entail providing better market access to some stronger economies than would otherwise be considered but given the development benefits this is a justifiable step to take. The creation of regional engines of growth based on the faster growing powerhouses could enable faster development and increases in trade. Another area for further investigation by the government would be to consider the possibility of creating a market access scheme for economically vulnerable regions in addition to individual economically vulnerable countries.

IMPROVE RULES OF ORIGIN

In developing its own GSP scheme the UK should adopt simple, flexible rules of origin that allow the cumulation of goods from any eligible country. This will maximise integration and cooperation, reduce the costs of production and lower trade barriers. The UK should also conduct analysis of existing schemes to assess the optimum value addition threshold and adopt the minimum feasible threshold for goods containing produce from non-eligible countries. These steps would enable developing countries to increase their capacity to process goods and allow greater levels of value addition to take place in-country.

A more comprehensive paper can be viewed at:

<http://www.traidcraft.co.uk/>

[media/93242c6b-a9d9-4e15-bbbb-481c89989d0d](https://www.traidcraft.co.uk/media/93242c6b-a9d9-4e15-bbbb-481c89989d0d)

Updating and Upgrading UK Trade and Development Policy

Dr Jodie Keane

Economic Adviser, Commonwealth Secretariat

Despite much of the new information conveyed to policy makers regarding the deeply integrated and connected nature of global trade, coordinated by a few lead global firms, much of this seems neglected in the current debate on Brexit. Rhetoric harks back to a far more mercantilist time, when the interests of nation states and domestic firms were closer aligned than is the case today. Nowadays, most trade is in intermediate, not final goods, with a large share intra-firm. These new understandings of global trade, as well as the major information gaps revealed since the global financial crisis and great recession, pose a major challenge to understanding the full implications of Brexit. Mercantilist-styled “beggar-thy-neighbour” strategies can turn out to be “beggar thyself” miscalculations (Ahmed, 2016).

Efforts continue to reveal the nature of UK and EU integration within global production networks. This includes networks driven by UK-firms and EU-driven ones. There is some harmonisation of governance structures such as private product standards apparent. These are bound between networks of European firms, given recent waves of mergers and acquisitions. It is precisely these aspects which were emphasised by the Global Value Chain (GVC) literature of the 1990s which drew attention to the concerns of labourers and producers in developing countries, as trade become more fragmented across countries, but also more coordinated amongst lead firms. More recently, the GVC literature has helped to illuminate contemporary trade challenges for labourers in developed countries. This includes the tensions between economic and social upgrading – technological advancement induced through trade liberalisation.

Few authors pertain to fully understand the nature of UK integration within “Factory EU” although the data points towards this as a most urgent research endeavour (Baldwin, 2016). In terms of value added trade, we know that trading partners external to the EU have become relatively more important for the UK as a source of origin. However, both the EU and Rest of World have grown in tandem as a destination of the UKs trade in value added. The relationship of services trade to trade in goods (Mode 5) remains an ongoing research agenda (Cernat and Sousa, 2016). Despite the interconnected nature of trade in goods and services within GVC trade, obtaining disaggregated data across all four modes of services supply between the UK and EU and third-party countries remains challenging.

TABLE 1

UK Destination and Origin of Value Added Trade

	Year	EU	Rest of the World
Destination	2000	0.24	0.07
	2012	0.26	0.09
Origin	2000	0.15	0.14
	2012	0.16	0.18

Source: Eora-Miro; Parra-Mendez (2016).

Within this context, obvious uncertainty exists regarding how the new UK-EU settlement may induce trade shifts within European trade, finance and investment networks, as well as the subsequent oversight of EU institutions given the UKs red lines in the negotiations regarding the European Court of Justice. Since the operations of globally operating firms span multiple jurisdictions, these issues will be of interest to not only UK based subsidiaries, but also those based elsewhere with non-equity links to UK and EU based firms. Whilst the UK has stated that it will adopt a sectoral approach towards Brexit negotiations, much work remains to better understand the implications of this approach for the UK’s role within Factory EU and that of its developing trading partners.

FOLLOWING THROUGH ON EXISTING COMMITMENTS

Essentially, the implications for the UKs trade and development policy hinge on the UK-EU settlement. This currently oscillates between a hard and a soft Brexit: the former being reliance on WTO rules; the latter, most likely being a form of access to the EU’s single market (though the specific means remain unclear). Because agreement on the settlement is unlikely to be reached within 2 years, a transitional arrangement lasting up to 2020 – 3 years after the 2019 deadline of Article 50 – has been indicated by the EC. This will bind the UK hands to negotiate other trade deals until the new settlement with the EU has been reached.

Therefore between now and 2019 (European Parliament elections) and up to 2022 (when another UK general election is due) the EU, with the UK as a member, will continue business as usual. This includes progress on some of the specific trade and development commitments included in the ECs Trade Strategy (2015) such as:

- undertaking a mid-term review of the GSP by 2018;
- taking stock of lessons learnt on preferences for goods and consider similar preferences in services for LDCs to the EBA scheme, in line with the recent waiver for LDCs on services agreed at the WTO;
- reviewing together with EU Member States, the 2007 joint EU ‘Aid for trade’ strategy...in line with the 2030 Agenda for Sustainable Development;
- continuing to support a meaningful LDC package in the context of the conclusion of the Doha round;

- pushing in the G20, the WTO and other multilateral fora for close monitoring of the effect of third countries' protectionist measures on LDCs and how to remove them.

Because the UKs deal with the EU post-Brexit has to be less than what it is at the current time, clearly there is a potential to undermine some of the aforementioned points. The added costs of Brexit range from 5–10% ad valorem with potential disruptive trade effects arising from new costs of customs checks, inspections, regulatory compliance as so on (Fraser, 2017).

This underscores the imperative of the UK continuing to champion the trade and developments already included in the ECs Strategy (2015). This support will influence the likelihood of an early harvest by 2020 of some of the trade-related targets of the 2030 Agenda on Sustainable Development. The UK should continue to actively support the transformation of old investor–state dispute settlement into a public Investment Court System, as referred to in the ECs strategy of 2015 and given the subsequent progress since the EU–Canadian FTA (CETA).

MOVING FURTHER THAN THE EU – THE BINDING CONSTRAINTS

The EU's network of FTAs is not only broad, but also very deep. Indicators of the depth of FTAs include those aspects where agreements go beyond what has already been agreed at the World Trade Organisation (WTO) and the principle of Most Favoured Nation (MFN). The tendency of the EU to include specific MFN clauses within its FTAs in relation to goods, services, investment, public procurement, is only one reason why it seems probable that the UK may seek to adopt the EU's network of FTAs already in place with major trading partners (e.g. EU–KOREA), other developing countries which have entered into FTAs with the EU (e.g. EU–Vietnam), as well as those ACP countries which have Economic Partnership Agreements in place (EU–CARIFORUM). The EU has over 20 FTAs covering 50 countries, and a number of Commonwealth countries⁸. Whilst a systematic evaluation of the inclusion of the MFN clause within each of the FTAs is beyond the scope of this paper, the subsequent influence on negotiation strategies for developing countries seeking to enter into a bilateral FTA with the UK, as opposed to falling into a GSP regime (the current EU regime being in place for ten years from 2014) deserves further attention.

⁸ There are already FTAs in force between the EU and 18 of those 50 Commonwealth states (36% of the remaining Commonwealth). The EU has agreed FTAs with 14 of those countries (28%), subject only to completing the ratification process. It is negotiating or about to start negotiating FTAs with 13 states (26%). That leaves only 5 Commonwealth states. See Peers (2016) (<http://eulawanalysis.blogspot.co.uk/2015/11/the-eu-or-commonwealth-dilemma-for-uk.html>).

TABLE 2

Examples of Inclusion of MFN Clause in EU–FTAs

Agreement	Year	MFN Clause on Services Trade	MFN Clause on Investment (Mode 3)
CARIFORUM EC EPA	2008	1	1
Canada EC (CETA)	2016	1	1
EC South Africa	1999	1	0

Note: 1 = MFN provisions included.

EXISTING AGREEMENTS

Just as the process of separating the UK's schedule from the EUs at the WTO is likely to be challenging and possibly confrontational for some specific products, tariff lines and services, this will also be the case in terms of replicating the EUs network of FTAs, should this process unfold. If it does, it suggests a duplication of AGOA for SSA may be less likely compared to a similar network of FTAs to the EU being replicated. Within this context, however, a more strategic approach could be pursued by the UK which, similar to the aspirations of AGOA, seeks to build on the continents integration agenda.

The UK's approach to FTA negotiations with some ACP members and regions could avoid a tendency to reconstruct the EU's approach towards regional integration carte blanche, but instead adopt a much more amenable and developmental form of variable geometry. Some aspects of AGOA (and the pre-EPA trade regime) could be incorporated, such as greater cumulation across the ACP. Lessons should be gleaned from the relaxing of the EU's approach towards diagonal cumulation in its revised GSP of 2014. Such an approach could provide a more effective anchor to the African regional integration agenda. It could also better support, rather than undermine, the aspirations of other regions such as the Pacific. Some of the more contentious issues in the EPAs could be dropped.

UPGRADING FTAS

Through this approach the UK could seek to upgrade the Least Developed Countries (LDCs) – the number of which has doubled since 1971 – into a more development friendly trade policy. Such an approach would not simply relegate the trade needs of the LDCs to the EUs EBA regime or the EUs notified services waiver – which offer less favourable market access compared to existing EU FTAs. Instead, through a more strategic trade and development policy, incentives could be embedded in order to facilitate transition towards a new partnership, as well as graduation from the LDC status.

The most capacity constrained countries require the greatest assistance in terms of the advancement of social (and environmental) objectives. Over time, the EU has learnt this in countries such as Bangladesh and Cambodia (highly dependent on GVCs) through the implementation of initiatives to improve labour standards and fair pay, particularly for women, as well as the introduction of other measures to avoid tragedies related to poor health and safety standards.

Some EU member states are going further to ensure that their lead firms and MNEs have a duty of care across their supply chains. The UK has also introduced new legislation under the Modern Slavery Act and initiative on transparency in supply chains. However, questions remain regarding enforcement mechanisms.

There is a need for greater policy coherence. Whilst principles of sustainable development are integrated within the EU's GSP + regime, the burden of proof remain on producers, with trade-related assistance for adherence often limited. The compliance mechanisms to support adhere to principles of sustainable development are often weaker within Free Trade Agreements, compared to the GSP+. This questions the logic of the design of the EU's GSP and its interaction within the EU's "pyramid of preferences", within which an FTA should be the gold standard. Because it has been difficult to discern any development strategy within the EU's approach towards FTAs with developing countries to date, the UK, unilaterally, could seek to rectify this.

At some point, the next stage in the EUs EPA negotiations on issues around services and investment will commence. The UK could begin to articulate its vision as it embarks on its unilateral negotiation process, post-Brexit and dependent on the EU-UK settlement with regions such as the Caribbean – unique in the fact that this is the only region to have agreed a comprehensive EPA with the EU. Because the EU's GSP does not include services trade, it is imperative that a new settlement is reached which maintains the same level of access. New areas of specific interest to CARIFORUM and EC trade partners may be addressed, including, for example in environmental goods and services, maritime transportation as well as further liberalisation under Mode 4. The lessons must be gleaned from the EPA implementation experience within the region to date (Greene, 2015). Not all of these are related to the provision of adequate trade-related support for adjustment.

EFFECTIVE TRADE GOVERNANCE

The challenges posed by the UK's exit from aspects of the EU's single market will have to be confronted, particularly for developing countries which use the UK as a platform to access the EU. Particular challenges arise for the Overseas Territories in the Caribbean regarding financial services as well as fisheries. Major questions remain, for example, regarding the investments made by CARIFORUM countries in the UK and jurisdiction of EU institutions in the future.

The introduction of new barriers between trade destined for the UK and EU by developing country traders must be minimised – a formidable challenge. Impact assessments of trade policy changes will be required not only by the UK. Developing the analytical capabilities to effectively analyse the potential for trade shifts and consider the design the appropriate sensitising and flanking measures matters not only for the UK in view of its participation in GVCs, but also of external

partners in the EU as well as in third party, developing countries. Impartial support must be provided.

Whilst Baldwin et al. (2017) pick up on the issue of making trade more socially responsible and accountable in the UK, the link to the specific mechanisms established at the EU level in order to specifically achieve these objectives are not elaborated. Like its developing country trading partners, the UK has relied on the information conveyed through impact assessments undertaken by the EC for decades – constrained by macro models which assume final goods trade.

Even at the multilateral level, the debate on technological advancements versus globalisation, all pertain to a much more alarming absence of ex post analyses (impact assessments) of trade policy changes. In turn, the creation of effective flanking measures – designed to mitigate adverse effects of trade policy changes on labourers – as well as enhance the gains from trade – in terms of consumers' welfare, are invariably wanting.

In terms of sensitising measures, despite the EU mechanisms established to ensure civil society dialogue on trade policy changes which affect UK constituents, as well as networks of business associations, it is difficult to discern a clear structure in the UK. Some UK business associations report a preference to deal with International rather than European chambers. If not by design but rather by default, a more ad hoc nature of public-private dialogue mechanisms between state and business (e.g. car manufacturers) in the UK has been revealed since Brexit. Moving forward, the creation of fit for purpose consultative mechanisms and institutional frameworks for both business and civil society, will have to be created within the UK. This will entail greater accountability by policy makers.

This essential element of effective trade governance is not only good for the UK but also for its trade and development policy. Whilst the UK has not yet undertaken its own domestic impact assessment of Brexit, as part of the EU's procedures there will likely be a Sustainability Impact Assessment (SIA) of the EU-UK bespoke trade deal. This presents an opportunity for to reflect on previous analyses, their shortcomings as well as major findings.

It is therefore misleading to perceive SIAs as an add-on to trade negotiations and simple box-ticking exercise in addressing social and environmental concerns. Instead, within a fit for purpose trade governance structure, assessments should be reviewed and revisited as industrial structures change – with upgrading in some sectors and downgrading in others. Considering SIAs in this way could be more amenable to a sectoral approach to trade negotiations – the likely UK approach since this satisfies many of the UK's redlines (Gasiorek et al. 2061) – within 21st century trade in GVCs.

Structured and systematic dialogue mechanisms need to be established in order to ensure that the voices of the poorest and most vulnerable are heard and appropriate actions taken.

This includes not only within the UK, but also across the UKs future network of trading partners. This means building on the experiences of trade negotiations undertaken by the EU to date and reflecting on not only the content and scope of existing arrangements, but also the process.

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After Brexit... Securing ACP Economic Interests

Authors:

Edwin Laurent, SLC, CMG, OBE: Director, Ramphal Institute

Dr Lorand Bartels, Reader in International Law, Faculty of Law, University of Cambridge

Dr Paul Goodison, GDC Partners

Paula Hippolyte, Consultant, ITID Consulting

Dr Sindra Sharma, Lead Researcher Ramphal Institute

The UK's withdrawal from the EU, Brexit as it is commonly referred to, will see the EU losing its second largest economy or 17% of its GDP and the UK ceasing to apply all EU treaties to which it is party. There will be major consequences for ACP countries because a substantial portion of the development assistance provided by the UK is via the EU and trade with the UK is conducted within the regulatory and institutional framework of the EU.

What happens after Brexit will be determined by a range of variables including some that cannot be predicted with any certainty. The ACP countries need to be ready with strategies for safeguarding their interests and minimising damage to their economies and capitalizing on any opportunities that might arise or which they can create. For this, they will require collective action that extends beyond the traditional ACP-EU framework for consultation and engagement.

The UK Government is set to invoke Article 50 of the Treaty of European Union in the early part of 2017. This will commence a two-year period of negotiation on the terms of withdrawal. Until the UK has actually left the EU it is not permitted to engage in formal trade negotiations with third countries (including with the ACP).

Most predictions are that Brexit will negatively impact on the UK economy, and currency markets have already anticipated this by devaluing the pound sterling. The combination of those two factors will reduce the attractiveness of the UK as a market for ACP goods and services, and a provider of remittances, tourism expenditure and development aid.

DEVELOPMENT COOPERATION

Brexit will result in the loss to the EDF of its third largest contributor that is putting in nearly €4.5 billion to the 11th EDF. The UK is also a major contributor to the EU Development Budget. ACP countries will need to ensure that they continue to receive at least the same quantum of aid and that it is disbursed in line with their development priorities.

TRADE

Upon leaving the EU, the UK will be free, both to apply whatever import duty rates it wishes as long as they do not exceed those that currently exist, and to replace the EU wide trade regime that it operates with one of its own and directly negotiate trade agreements. Exports to the UK are substantial for all ACP regions and for many countries. This totals US\$12.3 billion. Much of this trade is governed by preferential arrangements, EPAs, GSP and EBA, which help keep exports viable and competitive where high import tariffs are levied, from which ACP countries are often exempted. For the UK, its exports to the ACP are very important, US\$8.3 billion in 2015, even though many individual ACP country markets are not large. In 2015 almost 40% of the UK exports to ACP countries took place under EU preferential trade agreements, which will most likely fall away with Brexit, placing UK exports at a disadvantage in terms of the tariffs applied compared to their EU27 competitors.

There are different possible trading relationships that the UK can have with the EU after Brexit, the only one that would be likely to permit the automatic continuation of the current trading arrangements with the ACP would be a Customs Union. This, however, is unlikely to materialise. Other more likely arrangements could see an FTA or some less comprehensive trading arrangement with the EU. If no agreement is reached the UK would not enjoy full access to the single market and customs union, and trade with its former EU partners on the basis of WTO rules (hard-Brexit).

AIMS FOR ACP POST-BREXIT

1. Ensure that the quantum of development assistance received is at least as much as would have been disbursed in the absence of Brexit and that it is in line with ACP countries' priorities.
2. That the ACP countries' trading positions in the UK are safeguarded and any hiatus to trade is avoided which, otherwise, would be very damaging to their economies. Consequently, duty and quota-free (DFQF) and other favourable access terms to the UK market, currently provided under the EBA, EPA and GSP must continue and the preferential margins that help ensure the viability of ACP exports to the UK be preserved. Specifically, the ACP should seek a political commitment from HMG that it will, upon Brexit, continue without interruption to:
 - a) offer EBA and favourable GSP concessions to eligible ACP countries
 - b) provide DFQF for countries currently exporting to the UK under EPAs. (This will be a transitional arrangement to permit time for negotiating and concluding WTO compatible FTAs, which might be based on the existing EPAs with the EU).
 - c) apply tariffs at existing rates, on third country imports of products of export interest to the ACP.

ELEMENTS OF A STRATEGY

As a group, the ACP is in a much better bargaining position than any of its members or regions, given the total value of UK exports to the countries that are also major suppliers of many important mineral products and commodities and host to substantial UK investment. In addition, such a large group of countries has considerable potential international political authority and influence. It needs to show that its role and significance is more than just an economic cooperation vehicle with the EU but a valuable and credible international political partner and ally on issues of mutual interest. For the ACP countries this will require the following:

1. Adopt a common position and strategy for advancing ACP interests post-Brexit.
2. ACP authorities, including their High Commissioners and Ambassadors in London, actively engage with and lobby HMG, not only in formal governmental meetings but also in other interactions with parliamentarians and officials.
3. Actively engage with the media and supportive organisations to help ensure favourable public attitudes to safeguarding ACP interests, post-Brexit.

CONCLUSION

Brexit poses serious threats to ACP economic interests, which should not be underestimated or ignored. The ACP will have to rapidly mobilise all available resources and engage with allies to vigorously and coherently pursue its shared interests. As a group ACP countries are of considerable economic importance to the UK. It therefore would be in the UK's own interests to safeguard and cultivate its substantial trade and investment with those countries.

The ability to effectively prepare and organise for and deal with Brexit will be a major test of the solidarity, coherence and maturity of the ACP Group and its ability to successfully address modern day challenges.

AFTER BREXIT: SECURING ACP ECONOMIC INTERESTS

The United Kingdom (UK) is set to withdraw from the European Union (EU), Brexit as it is commonly referred to, and as soon as this happens all EU treaties will cease to apply to the UK. The loss of the second largest economy in the single market which accounts for 17% of EU GDP will have major consequences for ACP countries because much of their economic engagement with the UK is within the framework of the latter's membership of the EU:

1. The ACP countries' trade with the UK is governed by EU treaties and EU law.
2. The ACP countries will lose the substantial UK contribution to the European Development Fund (EDF) and the EU Development Budget.

Understanding the precise impact of withdrawal and how it will proceed and, on that basis devising and implementing a strategy to safeguard and advance ACP interests will be essential.

Defining a new UK–Africa trade partnership

David Luke

Coordinator of the African Trade Policy Centre (ATPC),
United Nations Economic Commission for Africa (ECA)

While Africa may not be a top priority for the UK trade policy post-Brexit, the strong historical links and today's meaningful trading relationship between many African nations and the UK suggest that Africa should not be overlooked by the British government. In 2015⁹, the UK absorbed 4.3 percent of Africa's total exports. In the same year, the UK accounted for 12.4 percent of African exports to the EU. The UK is a particularly important export destination for certain African countries and sectors. In 2015, for Botswana, Mauritius, the Seychelles, Gambia, Kenya, Equatorial Guinea, Zambia, Rwanda and South Africa, more than one-fifth of their EU exports went to the UK alone¹⁰. The UK accounts for 67 percent, 41 percent, 31 percent and 22 percent of Africa's exports to the EU of beef, tea and spices, wine and fruit, respectively¹¹. Against this backdrop, Brexit has caused legitimate concerns in African countries, particularly (but not exclusively) those from the Commonwealth.

At the same time, Brexit—which will lead to the definition of a new trade policy for the UK with its trading partners—offers an unprecedented opportunity for Africa and the UK to mutually explore options for a win-win relationship looking forward. There is significant room to introduce improvements on existing preferential regimes under the EU to make them more effective in supporting Africa's integration, industrialization and development agendas. While engagement with the UK should fit within Africa's broader trade and regional integration strategies—particularly the CFTA, it is important that African countries solidify a common position with which to approach the UK, rather than waiting for overburdened UK trade negotiators to consider Africa.

It is in this framework that the African Trade Policy Centre (ATPC) of the United Nations Economic Commission for Africa (ECA), working closely with the Overseas Development Institute (ODI), is actively contributing to the constructive thinking aimed at facilitating the development of a new UK–Africa trade partnership. Although we are still in the early stage of our reflection, the main recommendations are as follows:

1. ROLLING OVER EXISTING PREFERENCES (IMMEDIATELY) AND EXPANDING COUNTRY–COVERAGE

The UK's Prime Minister recently triggered Article 50 of the Lisbon Treaty on the European Union, opening up two years of negotiations between the UK and the EU. However, there is scope for the UK to negotiate that transitional memberships of certain agreements/arrangement could be maintained.

Currently, African exports to the UK are covered by a number of variant preference regimes, namely: Generalized Scheme of Preferences (GSP)¹², Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+)¹³, and Everything But Arms (EBA) initiative¹⁴. Beyond these unilateral preference schemes, the UK is also engaged in trade agreements implying some degree of reciprocity in terms of market access with African countries. These are the Economic Partnership Agreements (EPAs)¹⁵ and the Euro-Mediterranean Partnership (EUROMED)¹⁶.

The survival and performance of many African firms and sectors exporting to the UK is expected to depend on whether preferential access to the UK market continues after Brexit or not. For example, African tuna exports cannot compete with Asian competitors in the absence of preferences. To avoid serious disruption to Africa's trade with the UK, it is therefore crucial that existing preferential arrangements are rolled over following Brexit. This should be the minimum and immediate result of the UK's future trade relationship with Africa. This will require minimum preparatory work—something of value to the UK given the burden of negotiating new agreements

¹² Provides duty free and quota free access in non-sensitive products and partial preferential access in those identified as sensitive by the EU. Preferences are excluded from almost a third of the product categories where countries instead face the MFN tariff. The products excluded from the EU GSP tend to be those for which preferences are of especial value and include many products important for Africa. Standard GSP market access is applied to the Congo Rep. and Nigeria.

¹³ It essentially covers the same product categories as those covered by the Standard GSP, but provides the full removal of tariffs on these products, as opposed to the mix of full and partial removal under the Standard GSP. It is granted to countries which ratify and implement core international conventions relating to human and labor rights, environment and good governance. GSP+ market access is applied to Cape Verde.

¹⁴ It offers duty free and quota free (DFQF) access to all Least Developed Countries (LDCs) in all product categories excluding arms and ammunition. EBA market access is applied to Angola, Benin, Burundi, Burkina Faso, Central African Republic, Chad, Comoros, Congo, Dem. Rep., Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Liberia, Malawi, Mali, Mauritania, Mozambique, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Tanzania, Togo, Uganda and Zambia.

¹⁵ They offer the same EU market access conditions as the EBA, but to all African countries party to the agreement, including non-LDCs. African partners also offer preferential access to EU exports. EPAs are in force or provisionally applied in Botswana, Cameroon, Ghana, Cote d'Ivoire, Kenya, Lesotho, Madagascar, Mauritius, Namibia, Seychelles, South Africa, Swaziland and Zimbabwe.

¹⁶ The partnership is aimed at removing barriers to trade and investment between the EU and Southern Mediterranean countries and between the Southern Mediterranean countries themselves. The scope of current agreements in force is limited to trade in goods. Euro-Mediterranean Partnerships are in force with Algeria, Egypt, Morocco and Tunisia.

⁹ ECA calculations using UNCTADStat.

¹⁰ ECA calculations using UNCTADStat.

¹¹ ECA calculations using reconciled bilateral trade flows from the CEPII–BACI dataset.

and regaining full WTO membership. Moreover, it should not require any form of WTO waiver or agreement as the UK will be simply rolling over the existing EU preferential regime—this would be easily applicable to the GSP and EBA preferences. This would be a transitional arrangement before a more comprehensive Africa-UK agreement can be determined. It would provide legal certainty and assurance for African exporters and investors and continuity for African businesses.

A better option would be to even improve on existing preferential arrangements in the transitional phase. Although it is not expected that the UK will grant preferences to Africa exclusively, they should include African non-LDCs as well. For example, the UK should consider offering preferences (beyond the GSP) to countries which have already signed the EPAs as well as non-LDCs that are highly dependent on UK exports. It will also be critical that African countries can make better use of the preferences they are being granted. Whereas African countries need to address a number of challenges related to supply-side constraints, the UK needs to offer more flexible rules of origin, including regional cumulation.

2. SUPPORTING AFRICA' REGIONAL INTEGRATION PRIORITIES AND PRO-DEVELOPMENT MEASURES

Ultimately, the UK should consider a continental approach to Africa. This is necessary to avoid that any UK-Africa trade deal undermines Africa's regional integration efforts, particularly the establishment and future functioning of the Continental Free Trade Area (currently under negotiations). It would not only be coherent with Africa's vision defined by Agenda 2063 but also reducing the multiplicity and complexity of new arrangements; this would further help building confidence between the two parties and avoid overstretching negotiating capacities on both sides.

This would strongly contrast with the approach followed with the long and painful EPA negotiations. EPA process has been marred with controversy and has proved very divisive among African countries. The five African negotiating blocs under EPAs have been moving at vastly different paces, and progress has often stalled even in blocs which have made most progress. A key conflict has been between the non-LDC countries, which have been at risk of losing their preferential market access conditions, and the LDCs, which benefit from the unilateral access they already have through the EBA. The fragmented approach to the negotiations also creates obstacles for the ability of African countries to develop much needed regional value chains (RVCs). The application of several cumulation regimes in particular, as well as the difficulties linked to the administrative cooperation requirements, limit opportunities for value chain development between countries in different EPA blocs. RVCs are important for creating learning and capacity building opportunities for African countries that are further behind in the development of productive capacity, and therefore face greater challenges in accessing the UK market. Additionally, EPAs are perceived as hindering the development of domestic industries through

increased competition from European producers. While the agreements include provisions allowing for the protection of domestic (infant) industries, such measures are limited in duration and potentially complex to justify¹⁷. Furthermore, the differences in the five regional agreements with the EU are likely to create additional complications once Africa is ready to establish its Continental Customs Union, as envisaged in the Abuja Treaty.

In terms of the Africa-UK trade relationship going forward, it will be important to address the divisions created by the EPA process and the perceived limitations to avoid a trade arrangement with limited potential to be effectively implemented. While it is important to maintain continuity and avoid uncertainty, there should be an attempt to replace the EPAs with an improved framework. This could incorporate certain strengths of EPAs, but include additional elements of crucial importance to supporting Africa's integration, industrialization and development agendas.

Ideally, preferences offered to Africa should be progressively expended to all 54 African countries before they can grant some degree of reciprocity in terms of market access offered to the UK, with relaxed rules of origin. Reciprocity shall be introduced in compliance with WTO rules under Article XXIV of the GATT but it will have to take into account the developmental needs of African countries. In particular, long transition periods before African countries liberalize their tariffs vis-a-vis the UK must be considered, to allow the African parties putting in place reforms to improve their competitiveness. Beyond reduction of tariffs, a number of non-tariff barriers (NTBs) will need to be addressed so that African countries can fairly take advantage of a trade agreement with the UK. For example, technical barriers to trade which restrict products (such as tropical fruit, vegetable and meat products) for which African countries have comparative advantages should be relaxed. However, the UK should only change requirements that create an unnecessary and unacceptable burden for developing countries, and otherwise harmonize its requirements with existing EU requirements¹⁸. This will help to avoid confusion, uncertainty and the creation of additional costs to African firms exporting to the UK¹⁹. The EU set-up an Export Helpdesk to provide guidelines to countries wishing to export to the EU market. The UK should introduce a similar Export Helpdesk on leaving the EU.

¹⁷ With the exception of Egypt and South Africa, all African countries lack the capacity to actually use trade defence measures.

¹⁸ The South African Citrus Growers Association has suggested that revised UK plant health regulations on citrus imports could be easier to comply with than present EU regulations (Meintjes, 2016). Similar improvements could be arranged for fish and beef, of which African exports to the EU have fallen following compulsory and expensive regulations. For example, regulations to prevent Bovine Spongiform Encephalopathy (BSE) are unnecessarily applied to African countries in which BSE has never been diagnosed.

¹⁹ To avoid duplication of certification procedures, the UK should also negotiate with the EU, a mutual recognition agreement of certification procedures.

A fully development-oriented agreement between the UK and a continent-wide Africa would not just be in Africa's interest. Indeed, a unified, more visible and robust African market would also provide great opportunities for the UK. For example, Africa has the potential to absorb UK's exports of green technology, and thus Africa benefiting from technology transfer. In the same vein, Africa can benefit from imports of services, including those related to infrastructure, from the UK. At large, the future UK-Africa relationship should include considerations for the environment and climate change.

3. SCALING UP AID FOR TRADE AND PROMOTING INVESTMENT

The UK is the second largest individual donor of Aid for Trade (AfT) to Africa after the US. Brexit is not expected to significantly reduce the UK's Aid-including AfT- to Africa. Currently, almost all of the UK's direct AfT to Africa is destined to former UK colonies. When the UK exits the EU, it will be important to avoid increasing this concentration further. A more regional approach to AfT targeted at projects that focus on sectors with potential for upgrading RVCs, would help to avoid such a scenario, and also help to support Africa's integration agenda. There is scope to increase the amount of UK's AfT directed to trade facilitation. A number of NTBs will need to be tackled to allow for a more beneficial Africa-UK trade partnership and better utilization of preferential market access being offered to each other. There is also risk that African countries may be adversely impacted through trade diversion from any new FTAs UK signs with partners outside Africa. The UK should therefore also prioritize AfT for affected African countries to adjust and build productivity, trade capabilities and competitiveness overtime.

Beyond trade-related matters, the post-Brexit Africa-UK FTA should also aim to increase investment flows in support of Africa's regional integration and structural transformation. The CFTA will create a single African market of over a billion people and with a GDP of over US\$ 3 trillion. This will help to enable sufficient economies of scale and create new investment opportunities of potential interest to UK investors. In this regard, analytical work should be carried out to identify investment sectors and opportunities that are strategic for Africa at the same time as being of interest to UK investors. This could help to inform the development of a reciprocal element in any Africa-UK partnership in support of Africa's development priorities. For example, the continent needs to take advantage of transboundary investment opportunities that may support the existing efforts to reduce binding constraints to industrialization, including sectors such as infrastructure and technology and innovation. Africa could greatly benefit from public-private partnerships (PPPs) that target investment for infrastructure, technology and innovation at the transboundary level. In this regard, the CFTA could also be explored to serve as a platform to promote continental policies and regulation on investment which cater for these dimensions. UK firms could be given incentives to invest in the development of African non-extractive sectors

important to the future diversification and development of African economies. Such incentives could be provided by the British government²⁰. The CFTA agreement is expected to include a sub-agreement on investment that provides common rules for state parties for attracting investments to accelerate development. Together with the existing Pan-African Investment Code, it is also expected to feed into the existing national and regional investment laws and regulatory landscape. This provides an opportunity for regulatory convergence on investment issues which would facilitate access to UK investments in a broader African market, and therefore make it easier for the UK to engage with African countries on designing investment projects and programmes which are transboundary and benefit the wider African economy.

²⁰ An example would be a zero tax rate on repatriated earnings for companies that invest in certain sectors.

UK post-Brexit trade policy towards developing countries

Peter Lunenborg

Researcher, Trade for Development Programme,
South Centre

I. UNILATERAL PREFERENCES

1) TREATMENT OF IMPORTS FROM LDCs

- a) The UK should continue to apply EU's Everything But Arms
- b) In addition, the UK should implement to the fullest the recently adopted Nairobi Ministerial Declaration on Preferential Rules of Origin for Least Developed Countries (19 December 2015)²¹, which has the following elements:
 - i Requirements for the assessment of sufficient or substantial transformation
 - > Adopt a method of calculation based on the value of non-originating materials.
 - > Allowing the use of non-originating materials up to 75% of the final value of the product
 - > Deduction of any costs associated with the transportation and insurance of inputs from other countries to LDCs.
 - ii Cumulation
 - iii Documentary requirements
- c) There should be duty free imports of products originating from EU that incorporate inputs from LDCs

2) TREATMENT OF IMPORTS FROM LDC REGIONS

In 2011, AU trade ministers adopted a proposal on preferences for LDC Regions, officially known as the 'Proposal for a Common and Enhanced Trade Preference System for Least Developed Countries (LDCs) and Low Income Countries (LICs)' calls upon international partners to extend non-reciprocal duty-free quota-free treatment to all LDCs and also to 'countries in LDC customs unions'²². An LDC Region is one where LDCs predominate in the customs union i.e. at least half of the countries in it are LDCs. A customs union may be existing or planned.

This Proposal asks development partners of LDCs to only very marginally enhance the preferences that, in most cases, are already being provided to LDCs. It calls for the preferences for LDC to be extended to a small number of non-LDC countries that are in LDC Regions, or 'LDC customs unions'. Most of these non-LDCs are not materially different from the LDCs.

The other aspect of the proposal is for development partners to provide common and enhanced rules of origin also to these LDC Regions.

This proposal would support the regional integration of LDC regions which is an important instrument for sustainable development and a powerful stepping stone towards the integration into the multilateral trading system. Regional integration efforts of least-developed countries should not be undermined through the creation of different market access regimes to and with important trade partners, including rules of origin.

Developing countries and least developed countries which are building regional economic blocs share common development, trade or financial needs.

Therefore, UK is invited to consider providing LDC treatment to LDCs and developing countries belonging to an LDC region, meaning a customs union where the majority of the members are least-developed countries or a free trade area where the majority of the members are LDCs and all members have committed to form a customs union among themselves.

3) TREATMENT OF IMPORTS FROM OTHER DEVELOPING COUNTRIES

The EU currently has its own GSP and GSP+ scheme. It is suggested that the beneficiaries and conditions of these schemes would be 'frozen' until a new preference scheme would be established by UK.

With respect to GSP+, determination of eligibility would be in the remit of UK rather than European Commission. UK should provide GSP+ preferences to countries currently on the EU GSP+ list as well as other countries that comply with GSP+ conditions, in particular ratification of 27 international conventions. Countries not yet on the EU GSP+ list of beneficiaries (e.g. Nigeria) should be invited to submit an application to UK.

²¹ WTO document WT/MIN(15)/47 — WT/L/917, https://www.wto.org/english/thewto_e/minist_e/mc10_e/l917_e.htm

²² Proposal for a Common and Enhanced Trade Preference System for Least Developed countries (LDCs) and Low Income Countries (LICs), Adopted by the 7th Ordinary Session of AU Conference of Ministers of Trade (29 November – 3 December 2011), Accra, Ghana, <https://www.au.int/en/documents/29806/proposal-common-and-enhanced-trade-preference-system-least-developedcountries-ldcs>, <http://www.au.int/web/en/newsevents/26498/7th-ordinary-session-afri-can-union-conference-ministers-trade>

II. RECIPROCAL PREFERENCES (FTAS)

4) CLARIFICATION IS NEEDED ON UK'S OBLIGATION UNDER EXISTING EU FTAS.

It is unclear what UK's obligations under existing EU FTAs are according to international law. The answer to this question is important as it influences the basis for negotiations between UK and third countries.

The EU position on this matter is ambiguous. According to the EU's Brexit negotiation objectives: "The United Kingdom will no longer be covered by agreements concluded by the Union or by Member States acting on its behalf or by both acting jointly. The European Council expects the United Kingdom to honour its share of international commitments contracted in the context of its EU membership. In such instances, a constructive dialogue with the United Kingdom on a possible common approach towards third country partners and international organisations concerned should be engaged."²³

Thus on one hand, the European Council of Ministers considers that the UK would not be bound by existing EU FTAs ('no longer by covered by agreements concluded by the Union...') but nonetheless the UK should honour 'its share of international commitments contracted in the context of its EU membership'.

In the context of the Good Friday Agreement, a European Parliament briefing indicates that the situation is not so simple – post-Brexit UK would remain bound to treaty obligations agreed when it was an EU Member: "The UK's obligations in international law, via its commitment in the British-Irish Agreement to uphold the Good Friday Agreement, are owed to Ireland. A breach is also a breaking of the commitment to the people of Northern Ireland to uphold the arrangements contained in the Good Friday Agreement. Article 27 of the Vienna Convention on the Law of Treaties declares that states cannot invoke domestic law – in this case the impact of a Brexit bill – as a basis for failure to undertake the obligations of a treaty."²⁴

The extent to which a post-Brexit UK would be bound to existing EU FTAs might depend on the type of FTA. Several types of 'existing' EU FTAs can be distinguished, based on 1) whether they have been concluded by EU (yes/no), ratified by UK parliament (yes/no), and status of the FTA (non-application/provisional application or entry into force). See the table with some examples.

TABLE

Existing EU FTAs

SCENARIOS

1. EU FTAs concluded by EU ratified by UK parliament and entered into force.

2. EU FTAs concluded by EU, ratified by UK parliament and currently provisionally applied

3. EU FTAs concluded by EU, not ratified by UK parliament, entered into force

4. EU FTAs concluded by EU, not ratified by UK parliament, provisionally applied by EU

5. EU FTAs concluded by EU, not ratified by UK parliament, not applied by EU (not signed by all Parties)

6. EU FTAs not yet concluded/under negotiations

EXAMPLES

TCDA between EU and South Africa; once SADC EPA enters into force, TCDA will expire (with respect to EU trade)²⁵; EU-Egypt Association Agreement²⁶

CARIFORUM EPA²⁷, Cote d'Ivoire EPA²⁸, Central Africa EPA covering Cameroon only²⁹)

Eastern and Southern African (ESA) EPA covering Madagascar, Mauritius, Seychelles and Zimbabwe³⁰

SADC EPA covering SACU memberstates and Mozambique

EAC EPA covering Kenya, Tanzania, Uganda, Burundi, Rwanda (and possibly South Sudan)

EU-India, TTIP

25 – 29 see below

25 TCDA: The European Communities (Definition of Treaties) (Agreement on Trade, Development and Co-operation between the European Community and its Member States and the Republic of South Africa) Order 2002, <http://www.legislation.gov.uk/uksi/2002/3139/contents/made>

26 The European Communities (Definition of Treaties) (EuroMediterranean Agreement establishing an Association between the European Communities and their Member States and the Arab Republic of Egypt) Order 2003

27 CARIFORUM EPA: The European Communities (Definition of Treaties) (Cariforum Economic Partnership Agreement) Order 2009, <http://www.legislation.gov.uk/uksi/2009/1759/contents/made>; <http://ec.europa.eu/trade/policy/countries-and-regions/regions/caribbean/>.

28 Cote d'Ivoire EPA: The European Communities (Definition of Treaties) (Côte d'Ivoire Economic Partnership Agreement) Order 2010, <http://www.legislation.gov.uk/uksi/2010/2980/contents/made>, <http://ec.europa.eu/trade/policy/countries-and-regions/regions/west-africa/>

29 Central Africa EPA: The European Communities (Definition of Treaties) (Central Africa Interim Economic Partnership Agreement) Order 2010, <http://www.legislation.gov.uk/uksi/2010/2983/contents/made>, <http://ec.europa.eu/trade/policy/countries-and-regions/regions/central-africa/>

30 <http://ec.europa.eu/trade/policy/countries-and-regions/regions/esa/>

23 Draft guidelines following the United Kingdom's notification under Article 50 TEU, para 13, 31 March 2017

24 The Impact and Consequences of Brexit for Northern Ireland, European Parliament Briefing, 17 March 2017, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583116/IPOL_BRI\(2017\)583116_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/583116/IPOL_BRI(2017)583116_EN.pdf)

Certain FTAs have been declared by UK parliament to be a Community Treaty under the UK's European Communities Act 1972. Section 2(1) of that Act reads: "All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties *are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly*; and the expression [F1"enforceable EU right"] and similar expressions shall be read as referring to one to which this subsection applies."³¹

In other words these treaties have been before the UK parliament and declared Community Treaties. Consequently, the UK parliament explicitly agreed to make them part of the UK domestic legal order.

Other FTAs have not been declared 'Community Treaties' by the UK Parliament because they have been signed more recently (e.g. the SADC EPA) and/or these are treaties falling under EU's exclusive competence – which in principle do not require ratification by EU national parliaments (e.g. the ESA EPA).

A priori, it would seem that post-Brexit UK would be bound to existing EU FTAs when the UK Parliament explicitly consented to be bound by these treaties or when this FTA is in force (i.e. the EU FTAs listed under item 1 to 3 in the table).

³¹ European Communities Act 1972, Part I, Section 2, <http://www.legislation.gov.uk/ukpga/1972/68/section/2>

Elements for the UK Trade Policy after Brexit

Dr Max Mendez-Parra

Senior Research Fellow, Overseas Development Institute

Brexit will have fundamental implications for policy making and implementation in the UK. On one side, it will lead to a new trade relationship with its main trade and economic partner, the EU. On the other side, the UK will be again responsible for the design and implementation of its trade policy. Both aspects will have implications on the trade relationship of the UK with the rest of the world, especially with developing countries.

The definition of the new trade policy and the aspects of the negotiation with the EU that affect developing countries need to be based on some guiding principles³². The new UK trade policy needs to recognise that the UK will not be able to design its trade policy independently of what its partners want. Moreover, in the special case of developing countries, the UK needs to recognise that it is no longer their main trade partner and they may choose to prioritise the relationship with other partners, including themselves. Finally, the trade policy should guarantee in the short run that developing partners will not be worse off than under the current arrangements. These principles should be considered together with other key principles of policy making: simplicity, predictability and transparency.

PREFERENCES FOR DEVELOPING COUNTRIES

It is key to keep duty free quota free access to the UK market for least developed countries under Everything But Arms (EBA) regimes. These countries will face an annual £323 million bill in terms of tariff duties if their preferences are not rolled over after Brexit³³. However, these calculations do not consider the incidence of non-advallorem tariffs. The table below presents an updated calculation of the incidence of preferences.

Summary of import values/additional implicit duty payable under MFN (including AVEs) by various country groups (based on 2013-15 average UK imports)

Group	Extra duty payable *	Value of UK imports **
All EU preference beneficiaries	2,262	57,248
Least Developed Countries (EBA)	411	5,373
Low Income countries	35	432
Lower middle income countries	946	25,260
Upper middle income countries	1,027	29,150
Africa, Caribbean and Pacific	514	13,326
Commonwealth	952	43,442
FTAs/CU/special agreements	1,091	30,389
Economic Partnership Agreements	408	3,214
Standard GSP	210	16,497
GSP+	142	1,775
Africa	418	17,971
Sub-Saharan Africa	302	12,532

* Extra implicit duty payable without pref. (i.e. under MFN) (€ mn)

** Value of UK imports in HS 1-97 (average 2013-15, € mn)

This calculation does not consider the effect that preferences have in the production and employment in the beneficiary countries. Therefore, it is just a lower bound estimation of its importance for developing countries.

However, the bottom line message is that the UK should initially work to avoid a serious disruption in market access after Brexit by rollover the exiting preferential agreements. However, the UK should work to secure better preference-related provisions that maximise the value of the preferences:

- Define a unique, simple and full preferential regime that covers both LDCs and other developing countries. The regime should include, among other, all current non-LDC Economic Partnership Countries (EPAs). This will require the request of a WTO waiver.
- Design simple rules of origin that facilitate the formation of value chains between developing countries (i.e. diagonal and full cumulation)
- Increase the de minimis thresholds for products originated in LDCs
- Facilitate the certification of compliance of origin

FREE TRADE AGREEMENTS (FTAS)

The UK has announced its interest in negotiate FTAs with many developed and emerging economies. Four points need to be considered in this aspect.

- As a full and independent member of the World Trade Organisation, the UK should work to maintain the centrality of the multilateral system. Therefore, these bilateral engagements should not undermine these efforts.
- The UK should give priority in the negotiation the rollover of existing FTAs with developing countries (e.g. Vietnam). The UK should not aim to rollover existing EPAs as they have proved to be flawed and they did not reflect anymore the interest of most of the parties involved. After the

32 Mendez-Parra, M. (2017) "Principles, constraints and elements of a UK trade policy for developing countries", Overseas Development Institute Policy Brief, <https://www.odi.org/publications/10666-principles-constraints-and-elements-uk-trade-policy-developing-countries>

33 Mendez-Parra, M., Te Velde, D W and Kennan, J. (2017) "Post Brexit trade policy and development: Current developments; new directions", Overseas Development Institute Policy Brief, <https://www.odi.org/sites/odi.org.uk/files/resource-documents/11338.pdf>

waiver expires, the UK may negotiate FTAs with all those non-LDC countries that wish to continue to have duty free access to the UK.

- The FTAs that the UK may seek to negotiate with developed countries and emerging economies may affect developing countries if the structure of the UK imports from the proposed FTA partner and the developing country are very similar³⁴. In case of serious preference erosion for (the poorest) developing countries, the UK could exclude the sensitive products in the liberalisation schedule with the proposed FTA partner. This will reserve the UK market for the products originated in the developing country. However, in the long run, the erosion of preferences may be unavoidable.
- Negotiate the inclusion of pro-development provisions in the FTAs to negotiate with the EU, developed and emerging economies. Among others, rules of origin that allow the use of inputs from the smaller developing countries and, if mutual recognition of certification bodies is considered in the agreement, this should be extended to the imports from LDCs.

NON TARIFF-BARRIERS

As the UK leaves the EU Single market, existing value chains involving UK and EU firms may be affected. Exports from developing countries may need to meet current EU standards and any new standard that the UK may create, increasing production costs. Moreover, certification procedures would be duplicated, increasing trade costs and potentially breaking value chains. The UK should:

- Either through a 'harmonisation' agreement with the EU or unilaterally, the UK should aim to take over and follow EU standards. Given that the product destined for both the EU and the UK will be produced under the same quality standards, production costs in developing countries should not be affected.
- Even when standards are equal, the UK and the EU could still require exclusive certification procedures. To avoid this duplication, the UK should negotiate with the EU, as part of its broad negotiation, a mutual recognition agreement of certification procedures. The UK certification body will be able to recognise compliance with EU standards and vice versa.
- The UK should aim to relax some sanitary and phytosanitary, if they do not constitute a serious risk to food safety or that may jeopardise trade with third countries, currently applied to products on behalf of the production interests of other EU members (e.g. black spot on oranges)³⁵

OTHER AREAS

Trade is becoming increasingly difficult to separate from other behind the border policies. They include services regulatory frameworks and investment. Consequently, the UK should also consider how it can facilitate services trade from developing countries. Moreover, it should aim to formalise investment relationships with developing countries beyond the simple protection of investor rights and include modern provisions related to the environment and labour rights³⁶.

Finally, the UK has been a world leader in the provision of aid for trade. This aid should be expanded and targeted to provide trade finance to overcome the fixed costs associated with trade and funding infrastructure projects in the transport and logistics areas, especially when they can be clustered with other public and private investments to increase production capacities. Interventions can be coordinated with other donors (e.g. EU) and development finance institutions such as the CDC³⁷. On the other hand, in a context of questioning of globalisation and its benefits, particularly in developed countries, the positive effects of aid for donor countries needs to be highlighted³⁸. Although British exporters may benefit from certain initiatives (e.g. aid on trade facilitation), aid must be completely free of any tying. Aid should not be used to promote or support British products or services in beneficiary countries.

34 See Mendez-Parra (2017) for an analysis of the similarity of the UK imports with developing countries and potential FTA partners.

35 Mendez-Parra et al (2017)

36 Gelb, S. (2016) 'Foreign investment and UK trade policy post-Brexit' in Mendez-Parra, M., te Velde, D.W. and Winters, L.A. (eds.) *The impact of the UK's post-Brexit trade policy on development*. London: Overseas Development Institute and UKTPO.

37 Mendez-Parra (2017)

38 Mendez-Parra, M. & te Velde, D.W. (2016) 'The effects of EU aid on EU employment and trade: An econometric investigation'. Report for the European Commission.

Beyond Brexit: How the UK Can Lead the World in Trade for Development

Michael Anderson, Ian Mitchell and Lee Crawford

Centre for Global Development

In contrast to Donald Trump's election as US president, the UK's Brexit campaign³⁹ and subsequent government response have emphasised that the UK will be outward-looking, embrace free trade and build new economic relationships. UK Prime Minister Theresa May has set the ambition for the UK to be a "[global leader on free trade](#)."

In our [report](#) released today, we look at how the UK can, after Brexit (and assuming the UK leaves the EU customs union), develop a world-leading trade for development policy.

First, we take a systematic look at how rich country trade policies affect developing countries to identify the leading approaches used elsewhere. Rich-world trade policy plays an important role in shaping the opportunities available in poorer countries. CGD's [Commitment to Development Index](#) (CDI, of which the latest 2016 rankings have also just been published) assesses rich-country trade policy in terms of market protection, impediments to imports and other restrictions, and [we identify the best countries](#) and their approach across these areas.

Second, we apply the implications for the UK context drawing on these lessons, the latest research and trade experts to identify the four steps that would take the UK to the top of the CDI trade index, and establish it as the world-leader on trade for development policy. The steps, summarised in the below table and explained fully in our [policy report](#)⁴⁰, are:

- 1 eliminating or substantially lowering tariffs;
- 2 improving preferential access for the very poorest countries;
- 3 cutting red tape at the UK border; and
- 4 enhancing the effectiveness of UK aid for trade

continues overleaf

³⁹ For example, UKIP's spokesperson on development Lisa Duffy said last week "[what UKIP's approach to development] believes in more than anything, is encouraging free and fair trade and opening up the UK's huge consumer market to these [developing] countries" Radio 5 Live 4th January 2017.

⁴⁰ <https://www.cgdev.org/publication/beyond-brexit-four-steps-make-britain-global-leader-trade-development>

FOUR STEPS FOR THE UK TO BE THE GLOBAL LEADER IN TRADE FOR DEVELOPMENT

Best possible access for Developing Countries to the UK markets			
1) Eliminating or substantially lowering tariffs	Australia & New Zealand	Reduce all tariffs to zero or a low common rate, particularly for agriculture and textiles Substantially reduce subsidies to agriculture	Opposition likely from currently protected UK producers, and some loss of tariff incomes
2) Improving preferential access for the poorest countries	EU & US	Commit to maintaining preferences currently offered by the EU Extend coverage to wider group of countries Improve rules of origin: <ul style="list-style-type: none"> ■ Lower value-added threshold ■ Generous cumulation 	The UK would need to gain approval at the WTO for its preferential regime Need for modelling and consultation on best approach
3) Cutting red tape at the UK border	Denmark & The Netherlands	The UK already does relatively well on customs procedures but could also do the following: <ul style="list-style-type: none"> ■ Reduce thresholds on customs and tax ■ Use international product standards 	Some minor loss of tax income
Support for policy reform in Developing Countries			
4) Enhancing effectiveness of Aid for Trade	TradeMark East Africa	Context and details of project design are key, as the failure of Trade Market Southern Africa highlights <ul style="list-style-type: none"> ■ Scope and pilot Cash-on-Delivery (performance-based payments) ■ Assess new UK trade deals for development impact to inform Aid for Trade targeting 	Results-based Aid for Trade untested and will need to overcome objections similar to those of other domains

Clearly, these steps would involve some challenges – in particular, domestically, some industries may seek to maintain the protection the tariffs provide them, and there would be some (small) lost tariff revenue. Internationally, the UK would need to build goodwill as well as being consultative, innovative and persuasive at the WTO to gain acceptance for these steps. The UK has at least two years before most of these policies would need to take effect, and it should use this time to work consultatively and in genuine partnership with developing countries as partners rather than supplicants.

Still, these steps would also benefit the UK. Whilst imports from developing countries are relatively small — some £34 billion (around \$41.5 billion), or 6% of the UK's £549 billion (\$670 billion) of imports — consumers and businesses would enjoy lower costs of imports; simplified sourcing of inputs from overseas and enhanced competition and UK productivity.

The UK's departure from the EU will present **challenges** for developing countries. But the Government can build political support across the Brexit divide for these four steps, which would enable the UK to improve substantially on the approach taken by the EU and other developed countries, benefit UK consumers and businesses, and show UK leadership in establishing a new global standard in trade policy for development.

Towards making a trade regime truly transformative for development

Machiko Nissanke

Emeritus Professor of Economics, SOAS

As many participants suggested, the first step that the UK government should take in relation to trade relationships with the ACP and other low-income countries is to make sure that the existing *unilateral* preferential (duty-free and quota-free) access by these countries to EU's single market is guaranteed under the UK's post-Brexit trade regime. Without going through protracted fresh negotiations, this can be achieved using a waiver clause under the WTO rule, or a part of the post Brexit transitional trade arrangements. Once this is put in place, the UK government could make further improvements to the existing EU arrangements for making preferential access to the UK more developmental by revisiting, and revising where necessary, the system of governance over the preferential system open to these countries. This could involve, for example, streamlining regulations over the Rules of Origin, non-tariff measures or extending the coverage of preferential access to goods and services. These include elimination of **tariff escalation** applied to processed goods and other restrictive regulations, which are clearly anti-developmental in their nature.

However, in my view, these steps could be regarded as a reflection of a rather **minimalist** position in the UK's efforts for making trade work for development. It is true that market access issues always dominate all trade negotiations, whether they are bilateral, regional or multilateral. In the past, unilateral preferential trade systems accorded to low-income, poor countries such as GSPs or EBM did make a difference to maintain their competitive edge in export markets. For example, preferential access to the US markets under the AGOA clearly did influence TNCs' decisions in choosing investment location in favour of low-income countries in Africa. Yet, I would argue that if we want to create a trade regime that makes a '**transformative**' difference to LIC's development prospects, we need to go beyond preferential access issues and to reappraise the approaches and positions taken in the past in a deeper, fundamental manner in light of emerging developmental opportunities and challenges LICs/ACPs have been facing.

As Keane remarks in her contributing remarks, the growth of world trade since the early 1990s has been largely driven by the phenomenal rise of trade in intermediate goods and trade in tasks. With radically reduced costs in transport, communication and coordination, global and regional trade has grown exponentially. Baldwin (2012) attributes the success story of the East Asia region under the current phase of globalization (globalisation's 2nd unbundling) to the region's ability not only

to participate actively in international supply chains but also to form its own regional dense production/trade networks, which led to the formation of "Factory Asia" – one of three growth poles of world trade along with "Factory Europe" and "Factory North America". By relying on their fast evolving dynamic comparative advantages, the economies in the East Asia region have been able to maximize the benefits from dynamic spatial externalities collectively. In contrast, the majority of the ACP countries have been left out from this dynamic aspect of trade. Their trade pattern is still characterized by the one they inherited from the colonial time, and most of them remain heavily dependent on primary commodities for fiscal and export revenues.

Baldwin (2012) notes that the 21st century global economic activities and relationships would be characterized by a high degree of interconnectedness in the trade-investment-services-IP nexus, in which: 1) trade will be dominated by cross-border trade in parts and components, rather than in final goods; 2) international investment will be in production facilities, training, technology and long-term business; 3) infrastructure services (e.g. telecoms, internet services, air cargo, trade-related finance, custom clearance services) are used to coordinate production; and 4) cross-border flows include flows of know-how such as intellectual property, and managerial and marketing know-how.

As discussed in Nissanke (2014) in relation to African economies, their aspiration for the 21st century should lie in active participation in dynamic aspects of such an emerging order of international economic relationships. Trade should aid, rather than hinder, their efforts of diversification and structural transformation of their economies. They should aim at creating **well-articulated** economic structures, wherein economic activities are closely linked to one another in a coordinated manner so that dynamic externalities and demand spillovers are generated to reinforce static gains from resource reallocation across sectors and dynamic gains from technological advancement economy-wide. Transformation of economic structures as developmental processes would then entail structural reallocation of resources from low-productivity, low-value-added activities to high-productivity high-value added ones *across* sectors and *within* each sector with a view to achieving this goal. The strength of such an economic structure lies in its ability to generate demand locally on a self-sustained basis, which reduces the dependence on external foreign demand. From this perspective, a creation of dynamic regional and continental markets forms an important pillar for realizing their developmental aspiration.

Steadily growing regional markets are certainly much more capable of producing secure jobs and providing growing population with gainful employment, creative activities and learning opportunities on a continual basis, than a narrowly-based, mono-culture economy characterised by "enclave" structures or fragmented activities. The process of structural transformation should be viewed as that of creating a 'learning society' (Stiglitz and Greenwald, 2014) via 'learning-by-doing'.

Trade policy along with other policies such as technology and education policies could play an active role in achieving these overall developmental objectives and should be available for managing the transition process. Trade can be truly developmental if it becomes instrumental for changing LICs' existing revealed comparative advantage through active 'learning-by-doing' and skill-technology-knowledge acquisition to accomplish *societal/social upgrading*. Neglecting or ignoring such developmental aspirations and imperatives held by LICs in *reciprocal* free trade negotiations would bound to generate tension, as has been amply demonstrated in the case of the protracted negotiation experiences with the EPAs.

Changes in mindset are also required in future trade negotiations in relation to the SDGs with 17 goals and 160 targets signed by the global community for achieving inclusive and sustainable development by 2030. These goals are not binding as such but nevertheless shared 'agreed' commitments. Trade negotiations should be conducted with reference to the SDGs, in particular, the shared objective of achieving sustainability in **triple** dimensions—*ecological, social and economic* sustainability. Product standards should be set with reference to all these three aspects of sustainability agenda, while 'aid for trade' facilities should be carefully vetted in light of sustainability criteria. These measures include promotion of adopting environmentally sustainable, green technology in goods traded and service provided in light of prevailing local conditions with proactive technology-knowledge transfer through a comprehensive aid package. Naturally, the product standards should not be used as protectionist measures in disguise. Nevertheless, trade negotiations should be used as a means to make ecologically sustainable production modes, technology and marketing methods available to local producers and traders.

Furthermore, for achieving social and economic sustainability, trade negotiations should also be conducted with a view to improving conditions of those workers involving in every node of supply/value chains. In the past, in fear of driving away TNCs, many governments in LICs have been reluctant to enact regulations to protect and enhance labour rights and working conditions. Indeed, globalization as proceeded to date has resulted in the erosion of the capacity of governments to raise revenues for redistributive purposes and instituting 'safety nets'. Instead in the name of retaining or strengthening competitiveness, globalization is, more often than not, used as an 'excuse' for not enacting regulations to protect local environments and safeguard the vulnerable/poor.

This sort of practice of 'the race to the bottom' strategy in regulatory environments should not be encouraged, as it would impinge upon social and economic sustainability in the long run not only in LICs but also globally. Along with other channels discussed in details in Nissanke (2015), and Nissanke and Thorbecke (2010), this process has contributed to the widely held view that globalization is mainly driven by the interests of big TNCs or large financial institutions. Indeed,

the corporate-led globalization, as referred to by many, has affected globally the functional income distribution between labour and capital decisively against the former. It is high time to change our mindset towards the levels of labour income by reverting back to a Keynesian perspective: instead of treating the level of wages as a means to raise competitiveness, thereby rationalizing measures of suppressing wage costs, labour income should be treated as a critical part of effective aggregate demand. In many LICs the poor and unskilled are most adversely affected by asymmetries in market power and access to information, technology and marketing in relation to TNCs as well as the dominance of TNCs in commodity value chain.

The recent rise of populism across developed countries reminds us of the peril of ignoring sharp configurations of winners and losers generated globally by the contemporary phase of globalization, as well as the ensuing growing global inequality to a staggering level. Worse, the most vulnerable in the society are often forced to bear the cost of recurrent financial and economic crises. Societal coherence has been torn apart in many parts of the world, while benefits from 'free trade' are challenged severely. Though a turning back to an insulate, inward-looking position towards trade is definitely not the answer, the open trade regime cannot be safeguarded if trade negotiations, including post-Brexit UK negotiations with the ACP, would not incorporate wholeheartedly the sustainability impact assessments (SIAs) in all three dimensions alluded to above. Reforming trade governance structure is certainly overdue and my hope is that the post-Brexit UK trade negotiations with developing countries would take note of these challenges seriously.

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Making UK trade work for development post-Brexit

Sheila Page

Overseas Development Institute

WHAT IS OMITTED FROM THE PROPOSED THREE ISSUES

GROWTH

There are two approaches to helping developing countries through trade: removing/reducing barriers to their imports from and exports to the UK and improving the UK's (and other major importers') growth and productivity performance, leading to long-term benefits to both the imports available to developing countries and their export markets. The choice of which should have priority depends not only on which might have greater benefits, but on which is more likely given the UK's policy priorities. DFID may have suggested that development influences UK trade policy, but it was not mentioned in the Prime Minister's Lancaster House speech, and, as Adrian Wood has pointed out (Wood in Mendez-Parra et al, 2016), the balance in UK politics has shifted away from aid and trade concessions for developing countries. The three objectives for UK trade, as defined in the UK White Paper on Brexit, are: promoting UK exports, maximising wealth through promoting inward and outward investment, and delivering the best international trading framework for the UK. Reducing all UK barriers to trade, including ending agricultural support, would contribute to the first of these without distorting discrimination.

CHANGED ROLE OF WTO

The third UK objective, the trading framework, could be an area of common interest for the UK and developing countries. Both Brexit and the US retreat from regional agreements will make the WTO more important. The UK will no longer be part of a large trader, and will therefore have the same need as developing countries for a rule-based international system.

INVESTMENT:

The second objective, promoting cross-border investment, could revive regulation of foreign investment as an issue. The UK might simply rely on its existing bilateral investment treaties, but may want to update them; developing countries would need to examine whether any proposals were acceptable, and whether to renegotiate bilateral agreements or move to an international approach.

TRADE REMEDIES

Anti-dumping and safeguards are not just EU 'competence' in the legal sense; the UK had no legal or administrative framework and no competent staff to take over what has at some times employed more than half of DG Trade. Developing countries could lobby for the UK to renounce anti-dumping on the grounds that Brexit is an opening to free trade. Or

they could argue that the UK should adopt one of the reform proposals which the EU has discussed. They could prepare to challenge any remedies as long as the UK is inexperienced at applying them.

COMMENTS ON THE ISSUES PROPOSED FOR THE WORKSHOP

PREFERENCES

Rolling over preferences could be presented as consistent with the government's apparent acceptance of what Corden called the conservative welfare function (valuing existing interests over potential losses). It might be achievable for the least competitive countries, although the problem of allocating tariff rate quotas is certainly not simple. But applying current EU preferences separately to EU27/developing country trade and UK/developing country trade would be worth less to developing countries than existing preferences unless there were complete cumulation and no trade documentation requirements between the UK and the rest of the EU (i.e. continued UK membership of the single market). The UK does not have the customs or inspection structure required to apply the current tariffs and standards, so there would be additional costs and administrative barriers. Changing UK rules, to show good will, could impose costs of adaptation and maintaining two sets of procedures, particularly on countries whose exports are transhipped or used in cross-EU value chains.

FTAS

The most important UK FTA with effects on development will be its new arrangement with the EU. As well as the impact on relative access and the potential problems for transshipment, if the UK has to set up border controls for trade with the EU, this will cause costly delays on all its other trade, a serious reduction in effective access to the UK.

Under WTO Article XXIV regulating regions⁴¹, if the UK post-2019 is entering an FTA with the EU, it could be required to offer the same legal access as it does now to current EU FTA partners (and should be asked for compensation in money or access for the increased costs). FTA partners could decide if they wanted to continue to offer reciprocal access. They will need to watch any new UK FTAs which would reduce their effective preference.

There are practical obstacles to FTA negotiations. The negotiations with the EU are being handled by DEXEU and those with other countries by DIT; trading partners will need to check for cross effects. Both sets of negotiations are being

⁴¹ with respect to a free-trade area, or an interim agreement leading to the formation of a free trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be.

handled by an inadequate number of inexperienced officials, with little use of background information. Two advantages could be a retreat from the paternalism of the EU's SIAs and the unfeasibility of a 'UK model FTA' because the UK does not have the negotiating power of the US or the EU.

NTBS

It is unrealistic to expect the UK to develop its own product standards. It will be difficult enough to make the necessary changes in UK legislation to meet the Brexit deadlines; only the most urgent domestic reforms will be considered during this period. Imposing different standards in trade may never be a feasible policy for a small country, and certainly not one developing countries are likely to welcome.

On services, developing countries will need to watch UK-EU negotiations on Mode 4 and migration to ensure that they are not disadvantaged. The emphasis, in the White Paper and in the Prime Minister's speech, on limiting the total number of migrants, combined with lobbying by UK sectors to preserve some EU migration, could lead to a reduction in access for non-EU countries. Countries will also need to watch how the UK deals with the environmental treaties which have been either EU or joint competence.

Mendez-Parra, Max; te Velde, Dirk Willem; Winters, L. Alan, (ODI, 2016)
The impact of the UK's post-Brexit trade policy on development.

Bangladesh-UK relations

How will we fare after Brexit?

Mustafizur Rahman⁴²

Distinguished Fellow, Centre for Policy Dialogue (CPD)

With the UK Prime Minister triggering Article 50(2) of the Lisbon Treaty on March 29, UK has taken the first formal step leading to her departure from the EU. It is only logical that Bangladesh follows the upcoming Brexit negotiations with keen interest in view of the traditionally strong ties that the two countries have developed over the years. UK is a key development partner of Bangladesh, and the ties between the two countries cover a wide range of areas – trade and commerce, business and investment, aid and development support, people-to-people contact. Thus, it is in Bangladesh's interest to keep track of the upcoming Brexit negotiations in the next two years and remain engaged with the UK in view of the emerging scenario.

It may be noted here that, Bangladesh has already felt some of the early impacts of the UK referendum, held on June 23, 2016. The medium to long-term implications of the Brexit, both for the UK economy and the EU, are likely to be profound, and these will have important implications for their partner countries in the coming years.

With USD 3.81 billion worth of exports, UK is the third largest export destination of Bangladesh, after US and Germany, accounting for 11.1 percent of Bangladesh's global exports and 20.4 percent of her export to the EU in FY2015-16. UK is a major market for Bangladesh's apparels – textiles and RMG items account for about 93 percent of her total exports to the UK. Bangladesh is also gaining increasing foothold in a few other items – for example, over the last five years, average annual growth of footwear export to the UK has been significantly high – 27.5 percent. Exchange rate movement between the Great Britain Pound (GBP) and the Bangladesh Taka (BDT), following the June 2016 referendum, has already affected Bangladesh's export performance in the UK. Appreciation of BDT against GBP has undermined Bangladesh's export competitiveness particularly because Bangladesh experienced higher appreciation compared to some of her competitors in the UK market for apparels such as Vietnam and China. On the other hand, a depreciated GBP has made imports from UK to Bangladesh more competitive for the UK exporters. Bangladesh's exports to UK that are shipped onward to the EU market will also be impacted depending on the terms of UK's market access in the EU which will be negotiated in the course of the Brexit negotiations.

As long as the UK was part of the 28-member EU single market, Bangladesh was enjoying preferential treatment in the form of duty-free market access in the UK under the EU's everything but arms (EBA) initiative for the least developed countries (LDCs). Once UK leaves the EU single market, following conclusion of the Brexit negotiations, the market access scenario will likely change significantly. If UK takes the decision to offer market access to Bangladesh and other LDCs on similar terms as the EBA, following the Brexit, under the same terms and conditions, Bangladesh's exports will continue to enter under the prevailing regime. However, this has to be negotiated by Bangladesh, on a bilateral basis, or as part of the LDC group, with the UK.

Importance of the prevailing preferential market access in the UK is demonstrated by the fact that, import-weighted duties on Bangladesh's exports to the UK currently stand at about 11.7 percent. The duty-free entry thus offers significant competitive advantage to Bangladesh against duty-paying competitors such as Vietnam and India. A CPD study shows that, in absence of duty-free entry, total import duties to be paid for the top 20 items exported to the UK in FY2016, accounting for 81 percent of her total exports, would be about USD 375 million. Estimates carried out by the CPD also show that, in absence of duty-free treatment, Bangladesh's exports could fall by about 7.4 percent (worth about USD 280 million in FY2016 term). Indeed, Bangladesh is reckoned to be the hardest hit among all the countries receiving preference in the UK market. As the data indicates, following the UK referendum in June 2016, Bangladesh's export to the UK has fallen by 5.8 percent over the first seven months (July-January) of FY2017 compared to the corresponding period of FY2016 even though market access conditions have remained unchanged. Uncertainty about how Brexit will impact on the UK economy and the consequent subdued UK domestic demand, and also significant appreciation of the taka following the referendum are the possible reasons for this. In case of absence of the benefits accrued on account of the EBA, the negative effects will no doubt multiply. It is because of this that there is a need for a bilateral understanding about continued market access in the UK under preferential terms, following Brexit. In negotiating the trade deal with the UK, it will be important for Bangladesh to maintain the LDC-friendly terms and conditions which inform the EBA: principle of non-reciprocity, flexible rules of origin, friendly IPR regimes, SPS-TBT standards similar to the EBA.

UK is one of the major sources of remittance flows for Bangladesh; 5.8 percent of our total remittances (USD 14.9 billion) originated from the UK in FY2016. The significant appreciation of the taka against the pound has meant that recipients of remittances in Bangladesh have been receiving relatively lower amount in taka terms for the same amount of remitted money (in GBP terms) from the UK. Estimates show that remittance from UK during July-February period of FY2017 was 15 percent lower in GBP terms, and 30 percent lower in taka terms, over the matched period of FY2016. Bangladesh will need to take appropriate steps so

⁴² unfortunately unable to join

that remittance flows through formal channels from the UK, and is not discouraged due to currency fluctuations by way of diversion to informal channels. At the same time, Bangladesh will need to carefully examine the new migration policy to be negotiated, and subsequently pursued by the UK, in view of Brexit. As is known, migration was a key issue during the debate in the run up to the referendum. In all possibility, inflow of migrant workers from the EU to the UK will see significant curtailment; this could open up job opportunities for the Commonwealth member countries such as Bangladesh. Relatively competitively waged Bangladeshi workers could gain from the new UK regulations.

UK is one of the few G-20 countries which have fulfilled their pledge of allocating 0.7 percent equivalent of respective GNI towards overseas development assistance (ODA). With USD 230 million received as support in FY2016, Bangladesh was UK's 9th largest ODA recipient. About 14.3 percent of Bangladesh's total ODA comes from the UK. However, in taka terms the value of the ODA will suffer significant erosion in view of GBP depreciation vis-à-vis BDT. UK's exit will also have adverse impact on EU's pooled funds, such as the European Investment Bank (EIB), where UK is a major contributor. Low income countries receive assistance on favourable terms from these funds. Continued support by the UK towards areas which are currently supported by EU institutions should also be a matter of interest to developing countries such as Bangladesh.

UK is a major investor in Bangladesh. Cumulative UK investment stock till September 2016 was about USD 1560 million. These were mainly in the banking, textile and food industry sectors. While local procurement (in Bangladesh) for UK companies could become costlier (in view of GBP depreciation), repatriation of profits is likely to bring additional gains to the UK companies (in view of taka appreciation). It will be in Bangladesh's interest to encourage UK companies to continue to take interest in investing in Bangladesh. These companies could also play an important role in ensuring continued preferential market access in the UK since a significant part of their products are destined to this market.

Commonwealth as an organisation could gain increasing importance in UK's policy once she leaves the EU. Preferential treatment arrangement of some type, among the 54 Commonwealth member countries, has also been mooted. UK will also need to open discussion with the WTO members to renegotiate its trade relationship with these countries. It will be in Bangladesh's interest to keep track of these negotiations.

Brexit negotiations are likely to continue till March 2019 (and even beyond, subject to concurrence of all the parties). It is too early to speculate how the negotiations will evolve, although UK has given some early signals in the White Paper that it has circulated. UK is hoping to have a trade deal that will be significant in terms of 'scope and ambition' and she is keen to maintain 'deep and special' relations with the EU. However, it is still uncertain whether it is going to be 'Hard Brexit' or

'Soft Brexit'. In view of the evolving scenario, Bangladesh may set up a Task Force to study the possible impacts of Brexit on the Bangladesh economy, and to design appropriate strategies in this connection. The mandate of this Task Force may be as follows: (a) study the terms of Brexit, and examine their likely implications for the Bangladesh economy (market access, RoO, standards, IPR regime, migration remittance, investment, aid), (b) examine the developments in the UK economy, including demand situation and currency movements, and financial markets dynamics and their relevance for Bangladesh (BDT exchange rate remittance flow, dynamics of UK domestic demand), (c) study UK's negotiations in the various multilateral fora such as the WTO (adoption of schedule of concessions in the WTO, negotiations with members, special and differential treatment commitments and obligations) and regional trading arrangements (with UK participation, their terms and conditions, likely preference erosion for Bangladesh), and (d) provide strategic guidance to the GoB to build Bangladesh-UK bilateral relationship for the post-Brexit era (trade and market access, investment, aid, to name only a few) as also to contribute to designing Bangladesh's stance in relation to the UK as a leading member of the group of LDCs. Bangladesh has a strong bilateral, multi-dimensional relationship with the UK which has traditionally been a very special one. Maintaining this relationship, and its further strengthening, under the newly emerging post-Brexit scenario, ought to receive high priority from Bangladesh's policymakers.

UK trade policy post-Brexit

Jennifer Revis

Of Counsel, Baker and Mackenzie, London

This paper sets out, at a high level, potential steps that the UK could take after Brexit in improving its unilateral and multilateral preferential trading arrangements vis à vis developing countries. We set out our proposed key changes in section 1, before discussing additional potential changes to the UK's approach to unilateral and multilateral arrangements. Finally, we briefly discuss additional actions that could be taken to combat non-tariff barriers.

1. WHAT ARE THE KEY CHANGES THAT THE UK COULD MAKE THAT WOULD HELP TO MAKE UK TRADE WORK FOR DEVELOPMENT?

1.1 PROTECTION FOR IMPORTERS TAKING ADVANTAGE OF PREFERENCE

There is currently a lack of protection for importers seeking to import goods into the EU under preference in the event that preference is later disallowed. In particular, the so-called "good faith" defence under the Union Customs Code⁴³ is extremely limited. This defence only applies where:

- the importer "could not have reasonably detected" the error;
- the importer "was acting in good faith"; and
- there is an error on the part of the "competent authorities" (e.g., an incorrectly issued certificate by the exporting authorities). This condition will not be met where the certificate is based on an incorrect account of the facts provided by the exporter.

This situation is exacerbated by the movement toward electronic self-certification through the Registered Exporter (REX) system. Whilst this is a positive step in some respects (as we discuss further below), by transitioning to self-certification the customs authorities in the country of export now become irrelevant to the certification process. As a result, there are likely to be very few (if any) circumstances in which an importer could rely upon the "good faith" defence, as there will be no error on the part of the exporting authorities, which is a pre-condition to being able to rely on the defence.

We are aware of a number of importers (including large global-multinational companies) that have elected not to import goods into the EU under preference due to the risk that the EU customs authorities would detect an error in the claim for preference, in which case the importer would have little to no practical defence and could be liable to back duties and penalties for the customs violations.

If the UK were to ease the conditions for this defence (by, for example, permitting importers to rely on it in all instances where they have acted in good faith), it is likely that many more companies will be comfortable importing under preferential arrangements, thereby incentivising them to invest in and purchase from beneficiary countries.

1.2 TRANSPORTATION AND NON-MANIPULATION RULES

In order for goods to benefit from preference under GSP, the EU requires that they be "*the same products as exported from the beneficiary country in which they are considered to originate [and] shall not have been altered, transformed in any way or subjected to operations*" other than certain minimal operations such as labelling or preservation.⁴⁴ Similar requirements appear in the EU's FTAs (including a requirement for goods to be transported directly from the beneficiary country to the EU, with only minimal operations permitted in between).

The strictness of these requirements can have a significant impact upon the ability of importers to benefit from preferences. If an importer performs a minor operation in a third country such as repackaging, which does not affect the goods themselves, the goods may lose their preferential origin and render them dutiable. This means that importers that decide to benefit from preference lose flexibility in relation to their transportation arrangements and supply chain (which could lead to additional costs), whilst other importers may decide not to claim preference. This could be exacerbated after Brexit in situations where (for example) a company has an existing supply chain whereby goods are imported into the Netherlands, repackaged and then dispatched to the UK. At this point, the goods may lose their preferential origin from a UK perspective, rendering them dutiable.

The UK could therefore consider relaxing the "non-manipulation rule" and "direct transportation rule" by permitting goods benefitting from preference to be transported indirectly to the UK, and/or by expanding the scope of permitted operations to cover operations such as repackaging. Provided that the goods are not significantly changed (for example, so as to change their tariff heading), the goods could be imported under preference notwithstanding the fact that they had undergone minor operations in a third country.

1.3 CUMULATION AND RULES OF ORIGIN

Relaxation and expansion of the rules on cumulation and preferential origin are to some extent applicable to both unilateral and multilateral preferences.

- Cumulation: The EU's EPAs already provide for cumulation both with the counterparty states and with other ACP countries that are party to an EPA. However, the UK could go further. In particular, we highlight that the recently-

⁴³ Article 119 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (as amended)

⁴⁴ Article 43(1) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (as amended)

concluded EU-SADC EPA provides for cumulation both with other ACP countries, and in respect of products that can be imported into the EU duty-free regardless of origin (whether under MFN rates, or GSP or EBA preferences).⁴⁵ Expanding this broad approach into the UK's unilateral arrangements (as well as into multilateral agreements) would give importers to the UK substantial flexibility in their supply chains, allowing them more choice in the countries in which they invest. Investment is therefore less likely to be concentrated in particular countries with bilateral agreements with the UK, increasing the development gains for countries benefitting only from GSP.

- **Rules of origin:** This could be accompanied by some relaxation of the rules of origin. Whilst in many cases a “tariff-shift” rule is in place, in cases where the rules of origin require manufacture from no more than a particular percentage of non-originating goods, these percentages could be increased in order to make compliance with the rules easier.

2. UNILATERAL PREFERENCES

2.1 IMPROVEMENTS TO GSP

Whilst the principles behind the three-tier GSP system (GSP/GSP+/EBA) are laudable, there is more that could be done in order to ensure that preferences are granted to the right countries and in the right ways. Preferences should be granted in order to improve the situation on the ground, and should recognise both the overall prosperity of beneficiary countries and whether that prosperity filters down to the general populace.

- **Criteria for qualification for GSP:** In particular, the EU removes from GSP preference those countries that are classed as high or upper-middle income countries during the last three years based upon per capita Gross National Income (GNI), on the basis that these countries “clearly no longer need unilateral preferences such as the GSP to successfully trade with the rest of the world — and they have the resources to tackle more complex development problems such as income distribution, which require adequate internal policies.”⁴⁶ GNI is a blunt measure, and does not take into account factors such as wealth distribution or development indices that may help to give a better overall picture of a beneficiary's level of development. For example, Namibia is excluded from the EU GSP as (by the World Bank's measure) it is an upper middle-income country, with GNI per capita of USD 5,190 in 2015.⁴⁷ However, by other measures it falls behind, with a Human Development Index of 0.640 (125th in the world),

and a Gini coefficient⁴⁸ of 61.0, suggesting high levels of inequality and only medium levels of development.⁴⁹ A revised GSP that takes into account not only average income, but also other factors relevant to development such as inequality, would ensure that countries exhibiting (for example) high incomes but also very high concentration of wealth continue to benefit from preferences. Criteria for qualification for GSP+: The criteria and process for inclusion in the GSP+ scheme could also be revised and improved. Whilst the EU has made improvements in making the process transparent and fair, the UK should ensure that any revised criteria it uses, as well as the process for including and excluding potential beneficiaries, is as predictable and transparent as possible, with clear criteria. The UK should consider engaging directly with beneficiaries, particularly at the point of delisting from GSP+.

- **Linking GSP+ criteria to UK legislation:** Additionally, if the UK's goal is to encourage and guarantee good governance with its GSP+ scheme, it could consider tying qualifying for GSP+ to stringent criteria – for example, a beneficiary could be required to implement equivalents to UK legislation on issues such as environmental protection or employment rights, and not only to adhere to standards set out in international conventions (as required by the EU GSP+). This would likely have the effect of reducing the number of countries benefitting from GSP+; however, if the UK wants to strengthen GSP+'s status as an incentive measure, this may be a trade-off worth making.
- **Scope of the GSP:** The UK could also consider increasing the scope of the GSP to include services, to the extent permitted under WTO rules. However, any liberalisation is likely to be limited in scope, especially given that agreements such as CETA, the most comprehensive EU preferential arrangement in relation to services, contain a large number of derogations. We would therefore expect that a unilateral arrangement, with relatively little bilateral negotiation, would be even more limited and may not grant meaningful market access above that already provided for in GATS.

2.2 PAPERWORK FOR IMPORTERS

The EU is already making progress on this front, by introducing the Registered Exporter (REX) online self-certification system for origin certificates from the beginning of this year, intended to replace the previous system whereby exporters requested certificates from the competent authority. This is a positive step as compared with the previous system and should smooth the process of trading under preferential arrangement. If implemented successfully we would like to see the UK retain something similar post-Brexit. Particular changes that could be made will likely become evident as the system matures.

⁴⁵ Protocol 1, Articles 5 & 6 of the EU-SADC Economic Partnership Agreement, available at: http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153915.pdf

⁴⁶ http://trade.ec.europa.eu/doclib/docs/2015/august/tradoc_153732.pdf

⁴⁷ <http://databank.worldbank.org/data/reports.aspx?source=2&country=NAM>

⁴⁸ A measure of income inequality (with 0 representing maximal equality, and 1 maximal inequality)

⁴⁹ <http://hdr.undp.org/en/countries/profiles/NAM>

3. MULTILATERAL PREFERENCES – MAKING UK FTAS WORK

The EU's EPAs have been criticised for, amongst other things, threatening regional integration between developing countries (and thereby creating barriers to regional trade), and requiring counterparties to liberalise their economies too much and too quickly.

- **Trade within developing regions:** If the UK is serious about using its FTAs to benefit development, it could be more responsive to local considerations such as the importance of regional trade. For example, it could ensure that the regional groups with which it negotiates FTAs more closely match existing regional economic groupings – in particular those that are, or aim to become, customs unions. Whilst this may pose certain challenges (in particular the fact that members of these groupings may be at different levels of development and benefitting from different types of GSP preferences), a network of overlapping agreements with different parties is likely to overcomplicate trade between the UK and developing countries, rather than complement and enhance existing trading arrangements.
- **Impact on local markets:** The UK should also be responsive to local concerns. The economies of developing countries may be vulnerable to shocks resulting from liberalisation, and may be less able to compete with goods and services being imported from a wealthier economy. As such, the UK could consider slowing the pace of liberalisation in its FTAs with developing countries in order to allow them to adapt. This could be accompanied by investment in local infrastructure and technology, which would help local businesses to compete and develop.

4. NON-TARIFF BARRIERS

- **Product standards:** While non-tariff barriers may pose a significant barrier to trade, there may be good arguments for retaining a number of these. In particular, it will almost certainly be beneficial for the UK to retain similar product standards to the EU in order to facilitate exports to and imports from the EU, as UK-EU trade is likely to remain a priority. Similarly, it may be unwise for the UK to compromise on product standards in such a way as could threaten consumer safety. Instead, the UK should encourage developing country partners to adopt substantially similar standards to the UK, and to ensure that it recognises those equivalent standards, rather than risking its own trading relationships and consumer protection.
- **Trade facilitation:** The UK could also consider providing assistance to developing countries in their implementation of the WTO's Trade Facilitation Agreement. Factors such as complex or inefficient customs procedures, poor computer infrastructure, and lack of co-operation between agencies, can have a significant impact on the ease of import and export in developing countries, and may make those countries less attractive targets for investment. The UK could use its substantial experience and resources in this area to help developing country beneficiaries to modernise their systems and reduce red tape for potential investors.

International development and the UK sugar trade

Ben Richardson

Associate Professor in International Political Economy,
Department of Politics and International Studies, University
of Warwick

1. MAINTAINING THE REGULATORY STATUS QUO WILL NOT IMPROVE THE PROSPECTS FOR ACP/LDC SUGAR EXPORTS INTO THE UK

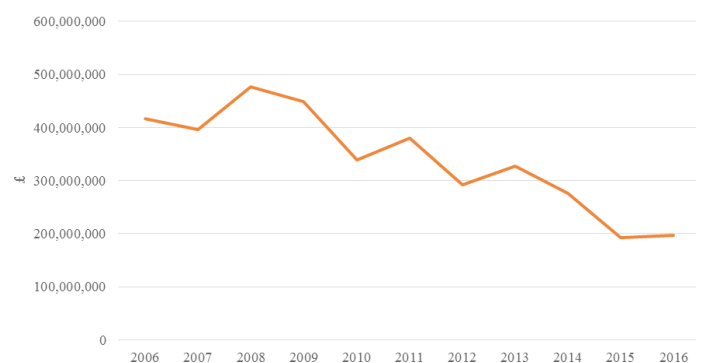
The UK market is supplied with 2 million tonnes of sugar annually; this is a relatively stable volume, with falling per capita consumption offset by growing population. Around 1.1 million tonnes of this comes from sugar beet, processed by British Sugar at its four factories in Eastern England.⁵⁰ Around 0.5 million tonnes comes from sugar cane, refined by Tate & Lyle Sugars at its factory in London, which has also been the major buyer of raw cane sugar in the EU.⁵¹ The remainder comes from imports of refined beet sugar from continental Europe and some direct consumption cane sugar (e.g. brown sugar crystals) from sourced from various countries by UK-based distributors.

Over the last decade the EU sugar market has been partially liberalised, first, by reductions in tariffs to select countries (i.e. Least Developed Countries covered by the Everything But Arms (EBA) agreement and those that signed FTAs including many African Caribbean and Pacific countries) and, second, by reductions in the EU floor price. This also affected the prices paid for imported sugar. In September 2006 raw sugar from the ACP cost €512 per tonne. Nine years on it had fallen to €375 per tonne.⁵² Many exporters could not maintain profitability at this price, leading some countries, like Trinidad & Tobago, to close down their entire industry. Others have begun to focus attention on regional markets and diversified into non-sugar products, e.g. bioenergy.

From October 2017 another EU reform will kick in, namely abolition of the internal production quotas which effectively limited the amount of beet sugar that EU member states could produce and sell. Removing quotas is predicted to increase the supply of beet sugar produced in France, Germany, and to a lesser extent, the UK (British Sugar has 1.4 million tonnes of capacity⁵³) whilst also removing the WTO-cap on exports to the world market. But by the same token, the import of sugar from cane growing countries into the EU is predicted to decrease from 3.0–3.5 million tonnes to 1.8 million tonnes.⁵⁴ Tate & Lyle Sugars were opposed to this reform, claiming that it put them at a competitive disadvantage compared to beet producers as it maintained a €339 per tonne tariff on MFN raw sugar imports.⁵⁵ They have been unable to source enough cheap raw sugar from countries with duty-free quota-free access to the EU and have thus been left with under-utilised capacity (they can refine up to 1.2 million tonnes).

FIGURE 1

Total price paid for raw sugar imports (HS1701) from non-EU countries into UK, 2006–2016



Data from HMRC.

⁵⁰ Cited by Paul Kenward, Managing Director British Sugar, in 'Could Brexit Be Sweet? The British Beet Sugar Industry after the European Union', The Spectator podcast, 9 February 2017. Available at: <https://blogs.spectator.co.uk/2017/02/brexit-sweet-british-beet-sugar-industry-european-union/>

⁵¹ Roberts, D. 'Sweet Brexit: What Sugar Tells Us About Britain's Future Outside the EU', The Guardian, 27 March 2017. Available at: <https://www.theguardian.com/business/2017/mar/27/brexit-sugar-beet-cane-tate-lyle-british-sugar>

⁵² Richardson, B. 'Sugar Shift: Six Ideas for a Healthier and Fairer Food System', Food Research Collaboration Policy Brief, 3 February 2016. Available at: <http://foodresearch.org.uk/wp-content/uploads/2016/02/Ben-Richardson-Sugar-Shift-briefing-paper-FRC.pdf>

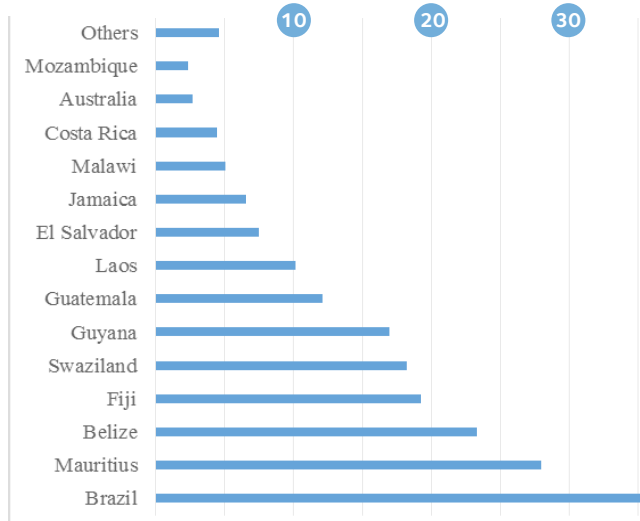
⁵³ Kenward, 'Could Brexit Be Sweet?'

⁵⁴ European Commission, 'Frequently Asked Questions: The Abolition of EU Sugar Production Quotas', October 2016. Available at: http://ec.europa.eu/agriculture/sites/agriculture/files/sugar/doc/sugar-faq_en.pdf

⁵⁵ Tate & Lyle Sugars Ltd., Written Evidence submitted to House of Commons International Trade Committee, 20 December 2016. Available at: <http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/International%20Trade/UK%20trade%20options%20beyond%202019/written/44536.html>

FIGURE 2

Total price paid for raw sugar imports (HS1701) from non-EU countries into UK, 2016 (£)



Data from HMRC. Note: Sugar from Brazil and Australia comes in under the EU CXL quota set at 673,000 tonnes in 2015-16 (with €98 per tonne tariff attached). Sugar from Guatemala, El Salvador and Costa Rica comes in under the tariff rate quota of the EU-Central America FTA. All other sugar comes in under the EBA or Economic Partnership Agreements.

This has also adversely affected Fairtrade sugar, one of the few ways in which some exporters of raw cane sugar have been able to offset falling prices. In 2008 Tate and Lyle, as it was then, committed to sell all their bagged sugar in the UK under the Fairtrade label (the majority of their sugar is sold in bulk to food and drink manufacturers). Belize was the initial beneficiary and by 2010-11 was exporting almost 0.07 million tonnes of raw sugar under the scheme, which brought a \$60 per tonne premium. Worldwide, 0.18 million tonnes of Fairtrade sugar were sold.⁵⁶ Yet in 2015 Tate & Lyle Sugars announced that it would drastically cut purchases of Fairtrade sugar from Belize, buying only 0.01 million tonnes.⁵⁷ That same year the company said it would no longer buy Fairtrade sugar from Fiji, citing EU market regulation as a reason.⁵⁸ Fairtrade sugar from Guyana has also been suspended.

The long-term future of Fairtrade sugar in the UK may well lie in processed foods like chocolate bars. However, this has been made more difficult because of recent changes in rules which allow companies to commit to Fairtrade one ingredient at a time. In October 2015 Mars Bars were launched in the UK and Ireland that used Fairtrade-certified cocoa but not certified sugar, even though sugar was its main ingredient.⁵⁹

⁵⁶ Fairtrade Foundation, 'Fairtrade and Sugar', Commodity Briefing, January 2013. Available at: https://www.fairtrade.net/fileadmin/user_upload/content/2009/resources/2013_Fairtrade_and_Sugar_Briefing.pdf

⁵⁷ 'More Sour Times in Sugar Industry', 7 News Belize, 28 August 2014. Available at: <http://www.7newsbelize.com/sstory.php?nid=29864>

⁵⁸ Richardson, 'Sugar Shift'.

⁵⁹ Nieburg, O., 'Divine Chocolate Questions Fairtrade Cocoa Sourcing Programme', Confectionery News.com, 5 March 2015. Available at: <http://www.confectionerynews.com/Commodities/>

2. BUT REFORMING UK TRADE POLICY TO ASSIST TATE & LYLE SUGARS WILL NOT NECESSARILY HELP ACP/LDC SUGAR EXPORTS EITHER

British Sugar cannot meet the entire UK demand at present, leaving at least 0.6 million tonnes of sugar open to other suppliers. The obvious candidate is Tate & Lyle Sugars. Moreover both companies, as well as the National Farmers Union, are likely to oppose unilateral tariff reduction on refined sugar, which are currently set at an MFN level of €419 per tonne. Prior to Brexit, Tate & Lyle Sugars lobbied the EU for the tariff on the CXL quota to be abolished so as to reduce the price it would pay for raw cane sugar from Brazil and others.⁶⁰ If the UK government were to agree to this within its independent trade policy and increased the size of the non-tariff quota or even removed the tariff on raw sugar altogether, a satisfactory corporate agreement may be found (noting that a continuation of prohibitive tariffs on refined sugar would need to be squared under WTO rules).

Two international problems present themselves immediately. First is the potential destabilisation of this arrangement by the UK's trade relationship with the EU. Small amounts of refined beet sugar are currently traded in both directions between the UK and the EU27. Depending on the tariffs adopted between an independent UK and the EU27, this may change such that more beet sugar is sold in the UK and prices pushed downwards – bad news for British Sugar and Tate and Lyle Sugars. (A related issue is the way that agriculture will be supported under UK farm policy. In 2014 just over €29m was paid to 3,400 British sugar beet farmers via direct payments under the CAP; changes in this may also affect output one way or the other⁶¹). For its part Tate & Lyle Sugars have cautioned that a continuation of the EU's rules of origin on sugar would deny origin status to refined cane sugar and thus prevent them competing with beet sugar producers in the UK-EU trade on a level footing.⁶² Moreover, food and drink manufacturers may be reluctant to use refined cane sugar in their products for the same reason.⁶³ One regulatory solution posed by EPA Monitoring has been to devise 'trilateral customs cooperation' arrangements for sugar which would allow for current duty free quota free beneficiaries to the EU to have their raw sugar refined and used in manufactured products in the UK without losing access to the EU27 market.⁶⁴

Fairtrade-cocoa-sourcing-program-questioned-by-Divine-Chocolate
⁶⁰ Reuters, 'Tate & Lyle Sugars Urges Removal of Cane Sugar Duty', Reuters Breaking City News, 26 November 2013. Available at: <http://uk.reuters.com/article/sugar-eu-tate-idUKL5N0JB1RZ20131126>

⁶¹ Richardson, 'Sugar Shift'.

⁶² Tate & Lyle Sugars, Written Evidence.

⁶³ Swinbank, A., 'Brexit and Some Possible Unforeseen Consequences for Third Country Exports of Farm Products', International Centre for Trade and Sustainable Development Opinion, 9 March 2017. Available at: <http://www.ictsd.org/opinion/brexit-and-some-possible-unforeseen-consequences-for-third-country-exports-of-farm>

⁶⁴ 'What are the Implications for ACP Sugar Producers of Tate & Lyle Sugars Expectations on UK Sugar Sector Policy post-Brexit?', EPA Monitoring, 10 April 2017. Available at: <http://epamonitoring.net/what-are-the-implications-for-acp-sugar-producers-of-tate-lyle-sugars-expectations-on-uk-sugar-sector-policy-post-brexit/#more-241>

Second is the distributive impact upon cane sugar exporters. Traditional ACP exporters have already been marginalised within the EU market, with the abolition of the internal quotas in 2017 set to continue this process, adversely affecting Belize, Fiji, Guyana, and Jamaica among others.⁶⁵ These four countries also have an acute sugar export dependence on the UK.⁶⁶ The proposed market sharing solution sketched above would add further woe, and, needless to say, failure to continue their duty-free quota-free access in the UK's post-Brexit environment would be the nail in the coffin. There are various reasons put forward as to why market share ought to be preserved for the traditional ACP exporters in particular, including post-colonial responsibility and the prevention of mass redundancy. How to do this, in a way that is politically and economically feasible given the cost of production differentials, is the challenge.

3. A RETURN TO MANAGED PRICES MIGHT BE POSSIBLE UNDER INTERNATIONAL TRADE LAW, BUT MAY NOT RECEIVE INDUSTRY SUPPORT IN THE UK AND EU²⁷

The Sugar Protocol was an international agreement under the 1975 Lomé Convention in which the EC (as was) agreed to buy 'specific quantities of cane sugar raw or white' for a price negotiated annually and within the range of domestic sugar prices.⁶⁷ Access to this arrangement was restricted to certain ACP countries (thirteen initially) based on internal lobbying and historic export levels. In 2009 the Sugar Protocol expired after the EU had abolished it as part of its internal reform, prompted in part by negative WTO rulings during 2004–06 on a case brought by Australia, Brazil and Thailand (DS265). However, it is worth reminding ourselves that the final ruling addressed the subsidised export of beet sugar from the EU, not the non-reciprocal treatment afforded to ACP suppliers or management of prices *per se*.⁶⁸ The US Sugar Program has a similar system which has thus far avoided WTO challenge.⁶⁹

To function effectively a price management system like this must restrict supply, typically through a combination of prohibitive tariffs on imports and quotas on domestic production (backed up by other instruments in case of temporary over-production, e.g. subsidies for storage or biofuel conversion). The rise in the price of sugar would be detrimental to

manufacturers, though there is a public health argument that an increase in the price of sugary food and drinks would be no bad thing. For export-oriented manufacturers, schemes that allow refined sugar to be imported duty-free and re-exported within processed products are common. However, the restrictions on future growth in sugar production may meet resistance from both UK sugar companies, while import restrictions will offend European sugar exporters. The trade preferences of the major corporations producing and buying sugar will be important in determining policy.

4. 'BRITISH' SUGAR COMPANIES ARE MULTINATIONAL, WHICH IS IMPORTANT IN TERMS OF THEIR TRADE POLICY PREFERENCES AND THEIR IMPACT ON INTERNATIONAL DEVELOPMENT

Debates about trade are often conducted in nationalist terms. But both British Sugar and Tate & Lyle Sugars are part of multinational companies. British Sugar is owned by the conglomerate Associated British Foods (ABF). In 2016 ABF completed a full takeover of the Southern African sugar producer Illovo. Illovo has mills in six countries including Malawi, Mozambique, Swaziland, Tanzania and Zambia which benefit from duty-free quota-free access under their respective Economic Partnership Agreement (EPA) or EBAs, and South Africa, which was granted an additional 0.15 million tonnes of duty-free sugar quota in 2016 as part of the SADC EPA (up to one third of which can be refined).⁷⁰ ABF also own Billington's, which is part of the Silver Spoon Company that markets sugar under its brands and those of private labels. Billington's sell unrefined brown sugar manufactured from cane, largely from Mauritius, plus Fairtrade sugar from Malawi and Brazil.⁷¹ From ABF's point of view, then, we might expect that they would prefer the UK to privilege raw sugar imports from Southern Africa.

Meanwhile, Tate & Lyle Sugars, encompassing its refinery in the UK and two more in Portugal and Italy, was acquired by the American Sugar Refining (ASR) Group, co-owned by two US sugar companies, Florida Crystals and Sugar Cane Growers Cooperative of Florida, in 2010. Two years later the ASR Group bought a majority stake in Belize Sugar Industries (BSI) which owns the only sugar mill in Belize, buying the cane of 5,300 farmers.⁷² The ASR Group might thus prefer to maintain some market share in the UK for Belizean sugar, supplemented in its factory by the cheapest raw cane sugar from the world market. The degree of autonomy that their

65 LMC International and ODI, 'The Impact of EU Sugar Policy Reform on Developing Countries', Report for Department for International Development (DFID) UK, February 2012. Available at: [http://r4d.dfid.gov.uk/pdf/outputs/TradePolicy/LMC-ODI_SugarReportPublicVersion\(Final\).pdf](http://r4d.dfid.gov.uk/pdf/outputs/TradePolicy/LMC-ODI_SugarReportPublicVersion(Final).pdf)

66 'Sugar Market Uncertainties for ACP Suppliers Will Be Heightened by Brexit', EPA Monitoring, 28 January 2017. Available at: http://epamonitoring.net/sugar-market-uncertainties-for-acp-suppliers-will-be-heightened-by-brexit/?_sft_category=sugar

67 ACP-EEC Convention Signed at Lomé on 28 February 1975. Available at: <http://www.acp.int/sites/acpsec.waw.be/files/Lome-Convention-I-en.pdf>

68 World Trade Organization, 'DS265: European Communities – Export Subsidies on Sugar', Dispute Settlement Summary, 19 May 2005. Available at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds265_e.htm

69 <https://fas.org/sqp/crs/misc/R43998.pdf>

70 South Africa Department of Agriculture, Forestry and Fisheries, 'Government Notices', Government Gazette, 28 October 2016. Available at: <https://www.tralac.org/images/Resources/South%20Africa/DAFF%20Procedures%20for%20Application%20administration%20and%20allocation%20of%20export%20quotas%20under%20TDCA%20and%20EPA%20between%20EU-South%20Africa%20for%202017%20Government%20Gazette%20No.%2040379%20October%202016.pdf>

71 Billington's, 'Frequently Asked Questions', Billington's website, no date.

72 'American Sugar Refining, Inc. Acquires Majority Interest in Belize Sugar Industries', PR Newswire, 4 October 2012. Available at: <http://www.prnewswire.com/news-releases/american-sugar-refining-inc-acquires-majority-interest-in-belize-sugar-industries-172678501.html>

respective UK subsidiaries have will be important in shaping the policy positions that emerge.

Finally, two other importers of direct consumption sugars into the UK are the Real Good Food (RGF) Company, which is part owned by Mauritius sugar company Omnicane, and Napier Brown, which RGF sold to the multinational French sugar beet company Tereos in 2015. Napier Brown have distributed around 0.3 million tonnes of sugar per year through brands including Whitworths Sugar.⁷³ Again, they are likely to have their own sourcing preferences. Moreover, they may oppose a duopolistic arrangement in the UK. In 2014 Napier Brown complained to the UK Competition and Markets Authority that British Sugar was abusing its market power by over-charging it for sales of sugar; a claim which the regulator chose not to investigate.⁷⁴

Reflecting on the multinational ownership of the sugar industry also directs attention to distributive questions in terms of class. For instance, in 2015 Illovo employed 12,000 people in permanent positions and 20,000 people on a temporary basis in its operations, yet some of these were paid poverty wages, i.e. below the level of a living wage.⁷⁵ Likewise, BSI has been at loggerheads with the cane farmers association in Belize over what farmers' representatives say are the low prices paid for cane and the high costs imposed for downstream business losses.⁷⁶

5. LESSONS MUST BE LEARNED FROM PREVIOUS 'AID FOR TRADE' INITIATIVES

If the traditional ACP sugar exporters to the UK do suffer loss of market share, then there may be calls to support them during this adjustment. In this respect, lessons can be learned from previous 'aid for trade' initiatives. As part of its 2006 reform to the sugar regime, the European Commission set up financing mechanisms to compensate EU and ACP producers and help them to adapt to the new rules. €4.7 billion was provided to EU sugar beet producers for renouncing production quota entitlement (with 10% reserved for farmers and contractors), €0.7 billion for diversification and €0.2 billion transitional aid for full-time refiners (chiefly Tate & Lyle).⁷⁷ This was funded by payments made by sugar beet producers that remained in business and so was essentially an intra-industry transfer. Beet farming also became eligible for direct

payments under the CAP. For the ACP countries €1.3bn in grant finance was allocated as Accompanying Measures for Sugar Protocol countries (AMSP) and became the EU's biggest single aid for trade programme to date. It was presented as a means to help countries cope with these changes by enhancing the competitiveness of their sugar industries, diversifying the economies of cane growing areas, and addressing the broader impacts generated by reform.

Three broad criticisms arose out of this experience. First, many industry and state elites in developing countries complained that the amount of aid pledged by the donor community has been inadequate and/or diverted from existing funds. For instance the sugar industries in the ACP decried the accompanying aid they were given as 'utterly inadequate' compensation for the revenue loss they would consequently experience. Second, mirroring the debate over aid conditionality, many NGOs have argued that Aid for Trade has come with too many strings attached, specifically the requirement that developing countries sign up to further trade agreements like the EPAs. Indeed, in its attempt to have all ACP countries ratify a full EPA by 2014 the European Commission publicly wielded the 'stick' of removing the market access these countries secured under interim EPAs and dangled the 'carrot' of additional aid for trade for those who accepted this 'offer'. Third, despite the nominal importance still attached to it as a means of addressing trade-related adjustment costs, aid for trade has not been well suited to this task. In countries like Swaziland, this was partly due to the slow nature of aid disbursement (given that it could not be allocated budget support because of corruption in government) and the incentives for policy-makers and industrialists to use it for commercial ends rather than as a form of social transfer.⁷⁸

6. WIDENING UNILATERAL TRADE PREFERENCES TO NON-LDC DEVELOPING COUNTRIES WOULD PROVIDE NEW MARKET ACCESS OPPORTUNITIES IN SUGAR

The unilateral expansion of duty-free quota free access preferences to non-LDC developing countries, including refined sugar within the product coverage, would offer new market access opportunities to low-cost exporters. Excluding EU countries, the biggest exporters of refined cane sugar in 2013 were Brazil (5.6 million tonnes), Thailand (2.5 million tonnes), Mexico (1.5 million tonnes), India (1.0 million tonnes), Pakistan (1.0 million tonnes) and Colombia (0.5 million tonnes).⁷⁹ Using sugar-related aid for trade finance producers in Mauritius have also invested in refining capacity and have marketed this (~0.2 million tonnes) in the EU under a five year contract with German sugar beet producer Suedzucker.⁸⁰ For sugar-containing products, £73m of

73 'Tereos Seals Deal to Buy Napier Brown', Yorkshire Post, 29 April 2015. Available at: <http://www.yorkshirepost.co.uk/news/tereos-seals-deal-to-buy-napier-brown-1-7235923>

74 McDonough, T., 'The Real Good Food Company to Take its Dispute with British Sugar to Europe', The Liverpool Echo, 25 September 2014. Available at: <http://www.liverpoolecho.co.uk/news/business/real-good-food-company-take-7831061>

75 Richardson, 'Sugar Shift'.

76 Ciego, A. J., 'Cane Farmers Demonstrate Against ASR Sugar Company', Amandala, 3 August 2016. Available at: <http://amandala.com.bz/news/cane-farmers-demonstrate-asr-sugar-company/>

77 European Court of Auditors, 'Has the Reform of the Sugar Market Achieved its Main Objectives', Special Report No. 6, 2010. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52010SA0006>

78 Richardson-Ngwenya, P. and Richardson, B. 'Aid for Trade and African Agriculture: The Bittersweet Case of Swazi Sugar', Review of African Political Economy, 41: 140, 2014, pp. 201-215. Available at: http://wrap.warwick.ac.uk/72986/1/WRAP_ROAPE_Pre-Publication%20%25281%2529.pdf

79 Data from FAOSTAT.

80 Agritrade, 'Mauritius Completes Move to Refined Sugar Exports, Other Countries Face Variable Prospects', Agritrade News, 9 August 2011.

sugar confectionery and £50m of chocolate and £53m were imported into the UK from non-EU countries in 2016, though tariff escalation on these lines is absent for most countries under the various arrangements.⁸¹

7. BUT EXPORT GROWTH CAN HAVE UNEVEN AND UNJUST EFFECTS

One of the most notorious cases in the global sugar industry has occurred in Cambodia, where land concessions were granted by the government to produce sugar for export under the EBA. These were widely considered to have violated the human rights of existing land users.⁸² In 2011 and 2012 consignments of this sugar went to Tate & Lyle Sugars for refining. The company was subsequently taken to the English High Court by lawyers acting on behalf of 200 displaced villagers and sued for compensation.⁸³ The company said they carried out third-party due diligence on the producer and that the rights violation was a matter for the Cambodian government to resolve. Lawyers are also trying to get the case heard by the International Criminal Court.⁸⁴ Other development issues related to export growth in the sugar industry include the uneven distribution of economic benefits. This was the argument made against ABF which was accused by ActionAid of tax avoidance in its Zambian operations and thereby depriving the Zambian state and public services from funding.⁸⁵ These and other cases show that the link between trade and development must be carefully scrutinised and suggests that supporting policy measures may be needed to prevent harm and promote fairness.

Available at: <http://agritrade.cta.int/en/layout/set/print/Agriculture/Commodities/Sugar/Mauritius-completes-move-to-refined-sugar-exports-other-countries-face-variable-prospects>

81 Data from HMRC database.

82 See Richardson, B. *Sugar*, Cambridge: Polity Press, 2015.

83 Sun, E., 'Land Grabbing in Cambodia: Redress Found in UK Courts?', *Columbia Journal of European Law*, Preliminary Reference, 1 February 2016. Available at: <http://cjel.law.columbia.edu/preliminary-reference/2016/land-grabbing-in-cambodia-redress-found-in-uk-courts/>

84 Arsenaault, C., 'Landless Cambodian Farmers Look to International Criminal Court for Justice', *Thomson Reuters Foundation News*, 22 November 2016. Available at: <http://news.trust.org/item/20161122140350-ze9ur/>

85 Lewis, M., 'Sweet Nothings: The Human Cost of a British Sugar Giant Avoiding Taxes in Southern Africa', *ActionAid Report*, February 2013. Available at: https://www.actionaid.org.uk/sites/default/files/doc_lib/sweet_nothings.pdf

Implications of BREXIT for Agricultural Trade

Professor Fiona Smith

Professor of International Economic Law,
University of Warwick

This memo sets out the opportunities and challenges for trade and development after BREXIT in the context of agriculture. The House of Lords EU Energy and Environment Sub-Committee considered the wider impact of BREXIT on Agriculture between January and March 2017. This memo builds on the findings of that report.⁸⁶

BREXIT may offer new export opportunities in agricultural trade for developing countries and the potential to reduce the levels of protection on UK agriculture. However, the opportunities may be more apparent than real.

MARKET ACCESS FOR AGRI-FOOD EXPORTS TO THE UK AFTER BREXIT

Immediately after BREXIT, the UK government intends to “minimise disruption to global trade” by replicating “as far as possible” the EU’s existing legally binding upper limits for agricultural tariffs, tariff rate quotas and existing commitments in the UK’s “schedule of concessions” to be deposited with the World Trade Organisation (WTO).⁸⁷

UK import tariffs on agri-food products may be very high post-BREXIT if the UK simply replicates the EU’s existing common external tariff on agri-food imports: for example, cheese = 40%; beef = 59% and Lamb = 40%.⁸⁸

Current discussions indicate that despite some suggestions that the UK reduce all its agri-food tariffs immediately to allow greater access for agri-food products, this will not happen in the short term.

The EU currently guarantees minimum market access opportunities for agri-food products through (a) tariff rate quotas (ie lower or zero tariff up to a specific volume of goods) and (b) preferential trade agreements like EPAs. BREXIT may change that minimum access and even reduce market access.

(A) TARIFF RATE QUOTAS

It is likely that the UK will seek a split of the EU’s current tariff rate quotas (TRQs). Dividing the EU’s TRQs between the UK and the EU will be difficult. The WTO rules in the Agreement on Agriculture required the conversion of agri-food non-tariff

barriers into tariffs in 1995. WTO members were required to maintain import access levels corresponding to those of 1986–88. Where this access was less than 5% of domestic consumption of the product in question, then an additional market access opportunity had to be opened up. Such minimum levels of access were implemented through tariff rate quotas.⁸⁹ Other TRQs have been put in place in specific circumstances when the EU lost a dispute as a form of ‘trade adjustment’ for the violation of the trade rules (eg the ‘Hilton Beef quota’ the EU introduced after the *Hormones* dispute).⁹⁰ TRQs were also introduced following accession of a new state to the EU. For example, following Bulgaria and Romania’s membership of the EU, New Zealand renegotiated its existing 226 700t quota of ‘meat of sheep or goats, fresh, chilled or frozen’ under GATT Article XXIV:6 and Article XXVIII to secure only a further 200t.⁹¹

Determining how the tariff rate quotas should be divided between the EU and the UK will be difficult because some countries may regard the split as the UK having ‘new’ TRQs which are in violation of the WTO Agreement on Agriculture. In addition, some WTO members who benefit from existing country-specific TRQs may feel their trading positions have been compromised. If this is the case, they may seek further trade concessions in the form of a larger share of the quota (as New Zealand did on EU enlargement).⁹²

The effect of any TRQ split is that (i) the UK agri-food market will remain as protected as the EU’s in the short term after BREXIT and (ii) any larger country-specific TRQs may crowd out developing country exports to the UK even further. The WTO rules are unlikely to resolve this problem because they refer to the need to ensure that “the conditions of competition for trade, not volumes of trade” between the members are unaffected by any readjustment in a member’s Schedule of Commitments.⁹³ This means that simply allocating a percentage share of an existing tariff rate quota to the UK (or the EU) may not be adequate as far as other WTO members are concerned.

(B) PREFERENTIAL MARKET ACCESS THROUGH EPAS

It is as yet unclear whether the UK will be required to take on the EU’s existing EPAs that cover agri-food trade or even whether as a matter of law the EU can insist that the UK take the EPAs on. As a matter of international law, the UK would be bound as EPAs as treaties to which the UK is a signatory. As a

⁸⁶ House of Lords, *Brexit: Agriculture*, 3 May 2017 HL paper 169 <https://www.publications.parliament.uk/pa/ld201617/ldselect/ldenucom/169/169.pdf>.

⁸⁷ “UK’s Commitments at the World Trade Organization”, Written Statement by Dr Liam Fox, Secretary of State for International Trade, 5 December 2016, HCW316.

⁸⁸ Nick Clegg: *Food, Drink and BREXIT*, (17/10/2016), available at: <http://www.libdems.org.uk/brexit-challenge-fooddrink-paper#>.

⁸⁹ Article 4.1 & 4.2 Agreement on Agriculture; Annex 3 Modalities Agreement.

⁹⁰ European Communities — Measures Concerning Meat and Meat Products, WT/DS26 & 48/AB/R, 16 January 1998.

⁹¹ Downes: “The Post-BREXIT Management of Tariff Rate Quotas” (2016) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2874371

⁹² Note the current position on the renegotiation of a tariff rate quota after the loss of a dispute in the WTO: *European Union—Measures Affecting Tariff Concessions on Certain Poultry Meat Products*, WT/DS492/R, 28 March 2017, Report of the Panel.

⁹³ Article XXVIII GATT, but note the effect of *European Union—Measures Affecting Tariff Concessions on Certain Poultry Meat Products*,

matter of EU law, the EU has competence over external trade policy and entered into the EPAs on behalf of its members: on exiting the EU, the UK will no longer be bound by EU law and therefore, by extension, the EPAs. This conflict between legal systems means the position will be resolved through political means inevitably.⁹⁴

SUPPORT FOR UK AGRICULTURE AFTER BREXIT

Kenyan Ambassador Stephen Karau (new Chair of the WTO Agriculture negotiations) pledged to continue talks on how to improve existing disciplines on domestic support (domestic subsidies). In particular, how to reduce the levels of trade distorting domestic support ('Amber Box') used by developed countries and change the rules to allow developing countries greater flexibility to use domestic support for food security purposes.⁹⁵ Domestic support acts as a barrier to developing country trade, so a reduction after BREXIT would be beneficial to expand export opportunities for developing countries.

UK farmers benefit currently from financial support from the EU's Common Agricultural Policy (CAP) in the form of direct payments (Pillar 1) and payments for rural development programmes (Pillar 2). The EU argues all CAP payments are compatible with existing rules because they either (i) fall within its permitted level of production-specific support for domestic farmers ('amber box') or (ii) the CAP payments are exempt from reduction commitments completely under Annex 2, Agreement on Agriculture (the 'Green Box'). The EU's latest notification to the WTO (covering 2012/2013) declared its non-exempt domestic support to be 5, 899.1million Euros and its exempt support (Green Box) to be 71,140 million Euros.⁹⁶ The continuing levels of protection for domestic agriculture in the EU is controversial especially for developing countries like China and India who do not have a so-called 'amber box entitlement'.⁹⁷

After BREXIT, the UK government confirmed that the existing levels of domestic support for farmers will be retained until the end of 2020 after the UK has left the EU in 2019.⁹⁸ The UK Minister of Agriculture, George Eustice MP, confirmed the government has yet to formulate its agricultural

policy after BREXIT, but he did make it clear that there will be "no cliff edge," and that some form of income support will continue for the foreseeable future, albeit more targeted towards improved productivity, knowledge transfer, investment in new technology and agri-environment schemes.⁹⁹ Although some change in levels of support may happen after 2020. George Eustice did make it clear that in his opinion: "... we should be targeting good, coherent policy that delivers for agriculture so that our farmers get a competitive advantage in the world because we have good policies that support them to become profitable, competitive, productive and sustainable."¹⁰⁰

To ensure its policy remains compatible with WTO rules, it is highly likely that the UK will seek a split of the EU's current 'amber box' entitlement as part of the BREXIT trade deal with the EU. As the EU uses so little of this entitlement at the current time, obtaining a share may prove uncontroversial in any EU-UK deal, especially if this reallocation means the EU loses some of its existing entitlement to use trade-distorting domestic subsidies in the CAP.¹⁰¹

FOOD SAFETY, FOOD QUALITY AND OTHER NON-TARIFF BARRIERS FOR AGRI-FOOD PRODUCTS AFTER BREXIT

The UK is a net agri-food importer. In 2015, the value of food, feed and drink exports from the UK was £18 billion, with the principal destinations being the Irish Republic (17%), France (11%) and the USA (10%).¹⁰² Imports into the UK were, however, £38.5 billion, with the principal destinations being the Netherlands (12%), the Irish Republic (10%) and France (10%). The UK had an agri-food trade deficit of £20.5 billion in 2015.¹⁰³

The EU is the most important market currently for UK agri-food trade both in terms of volume and value.¹⁰⁴ To continue exporting to the EU, UK farmers must continue to meet the EU's food quality, food safety and animal welfare standards. The Great Repeal Bill is designed to bring across all existing EU rules on food standards, labelling, food safety and animal welfare into UK law to achieve a "degree of equivalence" between

94 House of Lords: *Brexit: Agriculture* above, paras 117–119.

95 Bridges, "New Chair of WTO Agriculture Negotiations Restarts talks," 27 April 2017, <http://www.ictsd.org/bridges-news/bridges/news/new-chair-of-wto-agriculture-negotiations-restarts-talks>

96 Professor Michael Cardwell, University of Leeds, Written evidence to House of Lords Inquiry: *Brexit: Agriculture* (ABR0049), 22 March 2017, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-energy-and-environment-subcommittee/brexit-agriculture/written/48863.pdf> WTO, G/AG/N/EU/26 (2 November 2015) Notification of domestic support by the European Union for the 2012/2013 marketing year.

97 This does not include their right to support agriculture up to de minimis levels set out in Article 6.4 Agriculture Agreement.

98 "Chancellor Philip Hammond guarantees EU funding beyond date UK leaves the EU," 13 August 2016, <https://www.gov.uk/government/news/chancellor-philip-hammond-guarantees-eu-funding-beyond-date-uk-leaves-the-eu>.

99 House of Lords Select Committee on the EU Energy and Environment Sub-Committee: Corrected Oral Evidence: *Brexit: Agriculture*, 8 March 2017: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-energy-and-environment-subcommittee/brexit-agriculture/oral/48840.pdf>

100 George Eustice MP, oral evidence to the House of Lords' inquiry: *Brexit: Agriculture* 8 March 2017, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-energy-and-environment-subcommittee/brexit-agriculture/oral/48840.pdf>, 6

101 Professor Michael Cardwell written evidence to the House of Lords' inquiry: *Brexit: Agriculture* above.

102 DEFRA et al, *Agriculture in the United Kingdom* (2016) 84.

103 Ibid. See also DEFRA, *Statistical Data Set: Overseas Trade in Food, Feed and Drink* (2014) (available at: <https://www.gov.uk/government/statistical-data-sets/overseas-trade-in-food-feed-and-drink>).

104 DEFRA, *Agriculture in the United Kingdom* (2015), 87. House of Lords, BREXIT: the options for trade, House of Lords European Union Committee, 5th Report 2016–7, para 1.

UK and EU rules in the short term.¹⁰⁵ In the longer term, there seems to be a move towards regulatory equivalence with the EU and greater flexibility in free trade agreements with non-EU countries.

UK AGRI-FOOD EXPORT POLICY AFTER BREXIT

The UK's own food and drink strategy after BREXIT is challenging for development.

The UK's Secretary of State for Environment, Food and Rural Affairs, Andrea Leadsom, stated in 2016, that "we definitely want to continue maximizing trade possibilities with our European neighbours... But there are also enormous opportunities around the world".¹⁰⁶

The UK's Food and Drink International Action Plan 2016–2020 current focuses on how exports *from* the UK gain access to *all* potential export markets irrespective of their level of development. Such an aggressive export strategy could undermine developing country agricultural production:

"Exporting is key to long-term success of the UK food and drink industry, companies that export are overall more productive than those that do not." "As populations in major developing economies become increasingly affluent, the consumption of meat, dairy, processed Western-style grocery products and alcohol is growing...Major countries are seeking to build a global food supply chain and the areas in demand match areas of UK strength."¹⁰⁷

¹⁰⁵ George Eustice MP, oral evidence to the House of Lords' inquiry: Brexit: Agriculture, above, 15.

¹⁰⁶ Rt Hon Angela Leadsom MP, *Farmers' Weekly*, 17 October 2016.

¹⁰⁷ DEFRA, & Department for International Trade, *UK Food and Drink – International Action Plan 2016–2020*, (2016), 2.

Hope for the best – but plan for the worst: market access to the UK after Brexit

Christopher Stevens

Senior Research Associate, Overseas Development Institute

There is much to improve in the EU's patchwork of trade regimes for developing countries built up incrementally (and often as pragmatic short term fixes) over decades. So there is much that a post-Brexit UK trade policy could do better. And a good start has been made to map out the issues and make proposals.

THE POLICY PROBLEM: ASYMMETRY BETWEEN UPSIDE AND DOWNSIDE

But Brexit involves policy change that is so extensive and rapid that there is a real risk of a lose-lose situation for developing countries, at least in the short-term. Some exports to UK from currently favoured developing countries could fall off the cliff the day after Brexit without any offsetting pro-development innovations being in place. Even if the *status quo ante* is restored in due course, markets may have been lost permanently.

This could happen just because all eyes are elsewhere during the next two years. Despite government promises to the contrary, there is little evidence that the difficult issues facing maintenance of the *status quo* or improving upon it have yet been addressed.

It is even more likely because lobbying will be intense by established interests with deep pockets. Their interests will not necessarily be compatible with a more development friendly UK trade policy. To take one illustrative example, it is almost certain that on Brexit the UK will inherit trade and trade-related regulatory regimes identical to those of the EU27 even if it leaves both the customs union and the single European market. And, so long as the break is reasonably harmonious resulting in very close trade relations between UK and the EU 27, the political pressure will be intense to retain regulatory equivalence in order to facilitate UK exports to Europe. Maintaining very similar market conditions avoids close checking of goods moving across the border. Lowering tariffs or setting more flexible rules of origin for developing countries could undermine these efforts by risking that goods from favoured states circumvent EU barriers by transiting the UK.

Most at risk are those non-LDCs that currently have better access to the UK and EU markets through free trade agreements (FTAs) including the Economic Partnership Agreements (EPAs). The UK will fall out of these agreements unless all parties can agree an equivalent deal. In some countries this could take years (e.g. where it requires new legislation). So,

unless these countries start prepping the ground now, their exports to the UK may fall off the cliff after Brexit.

This danger would be removed if the UK simply applied the EU patchwork unilaterally – but the problem is the WTO. The UK would be treating some richer countries like South Africa and the Caribbean more favourably than poorer states like India and Brazil, but without the WTO legal underpinning provided by free trade agreements. LDCs would be eligible for an equivalent of Everything But Arms (were the UK to offer it). But the bottom tier of the Generalised System of Preferences (GSP) does not provide EPA equivalence. And the EU's GSP excludes Upper Middle Income (UMIC) and High Income (HICs) countries such as Namibia and much of the Caribbean.

There exist ways around this – but will the UK be willing to take them? It has been established by the WTO Appellate Body, for example, that differentiation within the GSP is acceptable provided that the beneficiaries share certain characteristics which are addressed by the more favourable treatment granted to them. Avoiding a sharp post-Brexit shock to established UK imports would seem to fit these criteria rather well. It could be the justification for continuing of the status quo under the rubric of a UK GSP at least temporarily whilst more WTO-compatible regimes are created. But the UK's trade regime after Brexit will be in the spotlight.

How high will non-LDC developing country interests rank in the UK government's WTO priority list? Evidently any regime that maintains or improves upon the status quo will need very careful design and piloting through lobby-infested waters.

THE RESEARCH PROBLEM: IDENTIFYING THE PROBLEMATIC TRADE FLOWS

Most exports to UK from developing countries will not fall off the cliff after Brexit because they face low or zero MFN tariffs – but some will. The research problem is that we do not know where the shoe will really pinch. Big wins or losses are most likely from the following types of UK policy change.

1. **Some developing countries risk losing their foothold in UK import markets** for one of two reasons: either their current favourable terms end on Brexit and UK trade policy imposes more onerous import barriers on them; or because it reduces the barriers to imports from competitors. These include Kenyan green beans, Namibian grapes, and Bangladeshi clothing.
2. **Lower-middle income countries not on favourable terms would benefit from an open UK.** If the UK replaced the EU patchwork with open access to all countries equally, imports from India, South East and East Asia, and parts of Latin America would become more competitive.
3. **Countries unable to access EU markets due to overly strict import rules would gain if the UK adopted more flexible policies.** Some developing countries have good market access on paper, but in practice are barred by other legislation. This includes the EU's rigorous rules

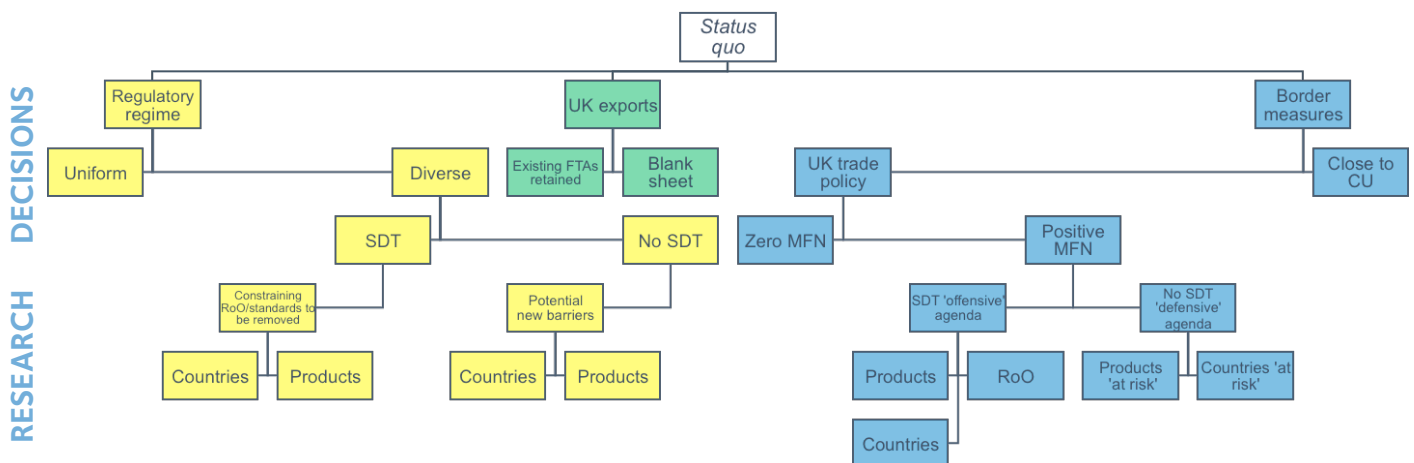
of origin and sanitary standards that are ostensibly about protecting EU consumers but, critics claim, are really about protecting EU producers (such as the ban on citrus blemished by the black spot fungus).

But this is too broad brush to identify the affected communities and the development impact. Would an open UK trade policy favour plantations over smallholders, or would vulnerable workers gain? Are the EU's sanitary standards really disguised protection or necessary to protect health?

The first step in answering such questions is to work out precisely which exports from which states would be affected most by UK policy change. It involves filling out with specific countries and products the boxes in the chart below. This shows analytically the critical 'decisions' along three pathways that will determine the areas in which developing countries might be affected most substantially. Reading downwards the chart covers a time frame of years (possibly a decade). But, reading upwards, the chart provides an immediate research framework to identify the most critical specific bilateral product flows. This is detailed, time-consuming stuff – but it can be done. It is an essential foundation for making the difficult trade-offs inherent in creating a more developmentally friendly UK trade policy.

CHART

Brexit decision points and research focus



Ensuring UK trade policy post-Brexit supports development in Africa

Sean Woolfrey and San Bilal

European Centre for Development Policy Management (ECDPM)

INTRODUCTION

The UK is an important export market for a number of African countries. These countries have benefited from preferential access to the UK market through the UK's participation in the EU's unilateral and reciprocal trading arrangements with third parties, such as the economic partnership agreements (EPAs) between the EU and regional groupings of African countries. The UK's withdrawal from the EU means that it will no longer be party to these arrangements, and thus raises concerns about the consequences for African countries' trade with the UK. The primary concern of African countries is that they will lose their current preferential access to the UK market. Given that international trade is an important means for promoting economic development, it is crucial, from the perspective of supporting development in Africa, that UK trade policy post-Brexit does not result in unnecessary disruptions to Africa-UK trade or to unfavourable outcomes for African countries in terms of their ability to access and compete in the UK market. Assuming that the UK exits the EU single market/customs union and that it does not simply adopt an open tariff regime with negligible most-favoured-nation (MFN) tariffs, it will have to take steps to ensure that its future trade policy preserves African countries' access to the UK market.

UNILATERAL TRADE PREFERENCES FOR AFRICA'S LDCS

As a first step towards minimising disruptions to Africa-UK trade and avoiding negative outcomes for African countries' trade prospects, the UK should ensure continued access to its market for Africa's least developed countries (LDCs). Arguably the best way to do this would be to replicate the EU's Generalised Scheme of Preferences (GSP), which includes the Everything But Arms (EBA) arrangement granting non-reciprocal, duty-free, quota-free access to all products from LDCs, except arms and ammunitions. Over time, the UK could also improve on the EBA by adopting simpler and more flexible rules of origin (RoOs) that allow for a broad definition of originating products, and provide for low domestic content thresholds and flexible cumulation rules. This would support the development of regional value chains in Africa and allow Africa's LDCs to enjoy continued market access to the UK while developing their capacity to engage in value-added production and diversifying away from production and exports of primary commodities. The UK could also explore the possibility of extending its unilateral trade preferences for LDCs to include services exports.

TRADE RELATIONS WITH NON-LDCS IN AFRICA

Ensuring continued access to the UK market for Africa's non-LDCs is likely to prove more challenging. Simply replicating the EU's GSP/EBA arrangements would result in a reduction in the preferential access to the UK market currently being enjoyed by many African non-LDCs through the EPAs and other EU free trade agreements (FTAs). Given that negotiating full FTAs with these countries is not likely to be a priority of the UK government post-Brexit, transitional arrangements will be required to ensure continuity in market access for African non-LDCs. Here the UK could explore the possibility of incorporating such arrangements into the conditions of its withdrawal from the EU, such that it could continue to participate in the EPAs and other EU FTAs for a temporary period. If this is not feasible, the UK could seek a waiver at the World Trade Organization (WTO) to establish a temporary unilateral preference scheme that ensures that all African countries maintain the same level of market access to the UK as they did before Brexit. In fact, it might be easier for the UK to simply go ahead and offer such a scheme without seeking a waiver, and then deal with the consequences of any WTO-related challenges to the scheme if/when that arises.

For the longer term, however, the focus is likely to switch to the conclusion of reciprocal FTAs with African countries or regional blocs. Here the lessons of the EPA negotiations should be heeded. One of the major criticisms of the EPAs is that they have created complications for regional integration in Africa. In this regard, concluding FTAs with individual African countries is probably not a politically desirable option for the UK. On the other hand, given the various overlapping memberships of regional integration arrangements in Africa, negotiating FTAs with regional African blocs could also prove tricky, as indeed the EPA negotiations have demonstrated. It would be optimistic to assume that the UK would face an easier ride in attempting to conclude comprehensive FTAs with Africa's regional blocs, especially if many members of these blocs would already have access to the UK market by virtue of their LDC status and thus would have little incentive to open their markets to the UK through reciprocal FTAs. Certainly, levels of enthusiasm for negotiating such trade agreements are likely to be uneven across the African continent.

By having transitional arrangements in place, the UK can at least afford to wait to see how the dust settles on the EPAs, and how ongoing regional integration processes in Africa progress. It may be that current processes of deeper integration and/or consolidation within Africa's existing regional blocs, as well as broader initiatives to establish a Tripartite Free Trade Area in Eastern and Southern Africa and a Continental Free Trade Area, result in a somewhat different landscape for negotiating trade deals between the UK and Africa. This is not to say, however, that negotiating an FTA between the UK and an economically integrated African Free Trade Area/Customs Union would be in any way straightforward. Indeed, if the

EPA process has demonstrated anything for the UK to learn from, it is that the transitional arrangements it puts in place might end up as the regulatory framework for UK-Africa trade for a lot longer than initially envisaged. For this reason, the UK should consider carefully how best to design these transitional arrangements to achieve its trade and development-related objectives with regard to Africa.

AID FOR TRADE

Finally, the UK should also ensure that its post-Brexit trade policy towards African countries – whether underpinned by significantly reduced MFN tariffs, or by unilateral preference schemes and FTAs – is complemented by development policies with a trade dimension. The UK has a strong track record in promoting Aid for Trade and should seek to strengthen existing Aid for Trade initiatives and support new ones. Such initiatives could be used to strengthen the capacity of Africa's trade institutions and to support entrepreneurship and participation in regional and global value chains. More generally, the UK should ensure that the trade dimensions of its development policy contribute to boosting the supply-side capacity of African countries, e.g. by improving capacity to meet product standards, and to lowering the cost of trading within and between African countries, e.g. through improved transport infrastructure and streamlined processes for cross-border trade. Aid for Trade to support African countries' trade goals can also be used by the UK to soften the negative impact of any preference erosion that may occur for African countries as a result of the UK lowering barriers to imports from non-African countries.



Trade Hot Topics

Post-Brexit UK-ACP Trading Arrangements: Some Reflections

Mohammad Razzaque and Brendan Vickers*

Background

The prospect of the UK formulating its own trade policy following Brexit is likely to have implications for the existing Economic Partnership Agreements (EPAs) between the European Union (EU) and some African, Caribbean and Pacific (ACP) countries, and the UK's future trading arrangements with the ACP. The latter will be determined by the nature of the UK's trade deal with the EU post Brexit and the trading regime it sets up with those ACP countries that have an EPA. ACP countries receive duty-free and quota-free (DFQF) market access into the EU for all goods (except arms and ammunition) under the EPAs¹, while the same treatment is offered by the EU to least-developed countries (LDCs) through the Everything-but-Arms (EBA) scheme. In the absence of equivalent market access, these countries may face higher most-favoured nation (MFN) tariffs in the UK market. In the short-term, the challenge for the UK is to ensure trade continuity on terms that are at least as favourable as those provided under the EPAs. This issue of *Commonwealth Trade Hot Topics* examines the implications of Brexit for existing EPAs, and options for trade arrangements that could

avoid possible trade disruptions arising as a result of post-Brexit policy shifts.

Economic Partnership Agreements

The EU and its ACP partners have negotiated seven regional EPAs that are at different stages of finalisation or implementation (Table 1). During the withdrawal negotiations, once the UK has triggered Article 50 of the Lisbon Treaty, the UK will continue to implement the EU's common commercial policy and all bilateral and regional trade agreements, such as the EPAs. Once the UK has formally exited the EU, however, all rights and obligations under these various agreements will cease to apply and the UK will devise its own trade policy.

Because the EPAs provide 'better-than-MFN' market access, the immediate impact could be that ACP exporters face MFN conditions in the UK market. While there is debate on what these MFN conditions would look like in a post-Brexit UK, one dominant view is that the EU MFN regime would be the starting point. Although current EU-UK MFN duty rates tend to be low, certain product categories, including those where ACP countries have export interests, attract

* Mohammad Razzaque and Brendan Vickers are respectively Adviser and Head and Economic Adviser at the International Trade Policy Section, Commonwealth Secretariat. The authors would like to thank Chris Stevens and Sanoussi Bilal for their comments on an earlier draft. Comments and suggestions from Fredrick Kamusiime and Radika Kumar are also gratefully acknowledged. Any views expressed in this article are those of the authors and do not necessarily represent those of the Secretariat or the persons named above.

1 EPAs provide DFQF market access for all developing-country signatories under reciprocal arrangements that also require ACP countries to open up their markets to the EU, albeit with longer transitional periods. The exception is South Africa, which does not obtain full DFQF access into the EU market under the Southern African Development Community (SADC) EPA. The EU continues to provide the other members of the SADC EPA Group better access to its market than it offers South Africa. Nevertheless, the region-wide SADC EPA still improves South Africa's market access when compared to its bilateral Trade, Development and Cooperation (TDCA) Agreement with the EU, signed in 1999.

Table 1: Overview of EU-ACP EPAs

Region	Status	Parties (including non-Commonwealth states)
Caribbean	Signed; ratification ongoing; provisional implementation (except Haiti)	Caribbean Community (CARICOM) member states (i.e. Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago) and the Dominican Republic
Pacific Islands	Provisional implementation of Interim Partnership Agreement by Papua New Guinea and Fiji; Comprehensive EPA negotiations suspended for three years	Cook Islands, Fiji, Kiribati, the Marshall Islands, Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu
West Africa	Signing process underway; Interim EPAs ratified by Ghana and Côte d'Ivoire	Economic Community of West African States (ECOWAS) member states (i.e. Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo) and Mauritania, which is not an ECOWAS member
Central Africa	Ratified by Cameroon; ongoing negotiations with the other parties	Cameroon, the Central African Republic, Chad, Congo, the Democratic Republic of Congo, Equatorial Guinea, Gabon, São Tomé and Príncipe
Eastern and Southern Africa (ESA)	Provisional implementation by Madagascar, Mauritius, Seychelles, Zimbabwe; ongoing negotiations with the other parties	Comoros, Djibouti, Eritrea, Ethiopia, Madagascar, Malawi, Mauritius, the Seychelles, Sudan, Zambia and Zimbabwe
East African Community (EAC)	Ratified by Kenya; signed by Rwanda. Tanzania has indicated it will not sign the EPA	Burundi, Kenya, Rwanda, Tanzania, Uganda. South Sudan, the EAC's newest member, does not need to sign the EPA until it completes the two-year bloc membership assentation period.
Southern African Development Community (SADC)	Ratified by all SACU members; provisional implementation for SACU; Mozambique finalising ratification	Southern African Customs Union (SACU) member states (i.e. Botswana, Lesotho, Namibia, South Africa, Swaziland) and Mozambique. Angola has an option to join the agreement in the future

Source: Authors' summary as at 19 October 2016.

much higher rates, known as tariff peaks. In the absence of more favourable trading arrangements, ACP exports to the UK could face a double impact. First, certain products could face higher MFN tariffs. Second, this would expose them to greater competition in the UK market, particularly from non-ACP developing countries. The overall impact will, however, depend on the relative significance of the UK market for ACP exports.²

The Caribbean Forum (CARIFORUM) EPA

The EU is CARIFORUM's second largest trading partner, after the USA.³ In 2015, CARIFORUM countries exported about US\$3.1 billion of goods to the EU, including goods worth US\$718 million that went to the UK (about 23 per cent). Sugar accounts for about one third of those exports. This means while the UK is not a dominant EU importer of goods

2 Although the UK is an important export destination for some ACP countries, especially where exports are concentrated in such products as sugar, bananas, vegetables, rum, etc., it is not a dominant EU importer in most instances. While the overall effect on the proportion of ACP exports being impacted by Brexit could be small, there will be significant and disproportionate consequences for certain sectors that are heavily reliant on the UK market. Further discussions on these issues can be found in Stevens, C. and Kennan, J. (2016) 'Brexit: a catalyst for EPA exit?' in Mendez-Parra, M., te Velde, D. W. and L. Alan Winters (eds) *The impact of the UK's post-Brexit trade policy on development. An essay series*. London: Overseas Development Institute.

3 CARIFORUM is CARICOM and the Dominican Republic (Table 1).

from the Caribbean, it absorbs a major share of key exports from a few countries (e.g. almost all of the banana exports from Saint Lucia and Dominica, Jamaica's rum exports, and more than 80 per cent of the sugar exports from Belize and Guyana).

CARIFORUM increased its overall goods exports to the EU between 2000 and 2015 (Figure 1). However, exports to both the UK and the EU have contracted since 2008, when CARIFORUM had a trade surplus with Europe. CARIFORUM exports to the EU halved from about US\$6.2 billion in 2008 to US\$3.1 billion in 2015, while exports to the UK declined from US\$905 million to US\$718 million during the same period.

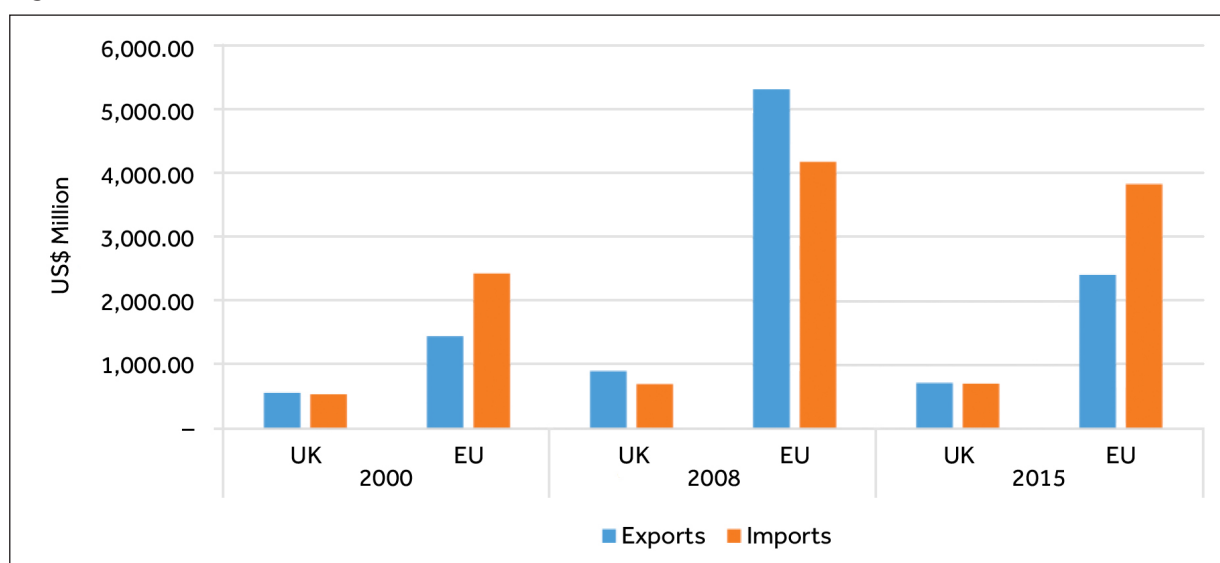
There are several reasons for this disappointing performance. The implementation of the CARIFORUM EPA came at a particularly challenging time, coinciding with the start of the global financial crisis, the Eurozone crisis and a corresponding contraction in European demand, a global trade slowdown, and natural disasters that hit several CARIFORUM states, undermining their economic growth. The mandated mid-term review of the CARIFORUM EPA confirms that, with some exceptions, the agreement has not yet had the anticipated impact on overall trade between CARIFORUM and the EU. CARIFORUM states have not been able to fully exploit commercial benefits from the DFQF market access offered by the EPA. Many CARIFORUM states' weak supply-side capacity, institutional bottlenecks, as well as built-in constraints of the Agreement are considered to be primary reasons for this poor trade performance.⁴

Under the CARIFORUM EPA, all goods exports receive DFQF access into the EU market. In the absence of similar treatment, several Caribbean exports post-Brexit could face higher MFN tariff rates in the UK, resulting in increased competition from non-ACP developing countries. At a broad level, the products most vulnerable to higher average EU/UK MFN duties, as listed below, include:

- fish and seafood products (11.21 per cent)
- edible fruits (5.46 per cent)
- vegetable, fruit and nut prepared food products (13.4 per cent)
- plastic and plastic articles (5.59 per cent)
- clothing (11.6 per cent)
- footwear (9.95 per cent).

The UK is a niche market for some key exports. It is, for example, a rapidly growing consumer market for bananas, sourcing around 25 per cent of its overall banana imports from the Caribbean in 2015. The Dominican Republic is the major beneficiary of the EPA's DFQF market access for bananas, which account for around 75 per cent of its total exports to the UK, followed by Belize, with bananas making up 54 per cent of its UK exports. Without EPA-equivalent preferential treatment, the Dominican Republic and Belize, as well as smaller producers in the Windward Islands, would face greater competition in the UK market from more cost-effective banana suppliers in, for example, Latin America.

Figure 1: CARIFORUM merchandise trade with UK and EU, 2000–2015



Note: EU means EU28 minus UK Source: Authors' calculations using data from UNCTADStat.

4 Joint Communique of the Third Meeting of the Joint CARIFORUM-EU Council, Georgetown, Guyana, 16 July 2015.

Services are key economic drivers for the EU and for most CARIFORUM states, accounting for 70 per cent of their GDP. The CARIFORUM EPA is the only EPA that includes services and its provisions are generally more attractive than anything available at the multilateral level. However, as the mandated mid-term review of the EPA confirms, Caribbean service suppliers have not, so far, been able to take advantage of the agreement, as they face barriers related to the mutual recognition of standards and difficulties in obtaining visas.⁶

There are substantial differences in the sectoral composition, degree of specialisation and market orientation of services trade between CARIFORUM, the EU and the UK. The UK's major services exports to CARIFORUM include business, finance, royalties and licencing, while the major CARIFORUM services exports to the UK include travel, tourism and communications. The Brexit shock will, in the short to medium-term, have an impact on Caribbean tourism. The weaker pound, potentially lower UK economic performance and greater caution around consumer spending will make the Caribbean's tourism sector less competitive. Given that UK travellers are reported to spend seven times more than the average tourist in the Caribbean⁷, the magnitude of this shock may be significant for certain countries.

The Pacific EPA

In 2007, the EU and two Pacific ACP states, Fiji and Papua New Guinea (PNG), concluded an Interim Partnership Agreement, while LDCs in the Pacific with some exports to the EU, chiefly Solomon Islands, continue to benefit from the EU's non-reciprocal EBA scheme. As well as providing DFQF access into the EU market, the Interim Partnership Agreement has more flexible fisheries rules of origin than the other EPAs. It allows globally sourced fish (from anywhere and caught by any vessel) to enter the EU market as Pacific ACP originating product, provided it was landed and processed in the Pacific ACP state. Negotiations towards a Comprehensive EPA (C-EPA) involving all 14 Pacific ACP states have been slow and in March 2016 the EU proposed suspending the C-EPA negotiations for three years.⁸

The trade of goods between the EU and Pacific ACP states is extremely limited. The UK, however, is an important export market for Fiji. In 2015, Fiji exported goods worth about US\$125 million to the EU, including about US\$97 million (or 77 per cent) destined for the UK market. Sugar accounts for almost 95 per cent of Fiji's export earnings from the UK.

The other EPA signatory, PNG, exported US\$520 million to the EU in 2015, of which US\$96 million (or 18 per cent) went to the UK. PNG has product-specific export interests in the UK market. PNG's main export to the EU is palm oil, with just over 35 per cent destined for the UK. Processed fish is PNG's second largest export to the EU, with the UK absorbing approximately one third of this.

Although the rest of the Pacific ACP states do not have substantial exports to the EU, the UK market remains significant for some, including Tuvalu (74 per cent of its EU exports are destined for the UK), Vanuatu (48 per cent), Samoa (46 per cent) and Micronesia (38 per cent).⁹

Sugar is a vital export for several Caribbean and Pacific economies. Given that the UK is the largest importer of sugar into the EU, concerns have been raised about the implications of Brexit for future bilateral trade in this commodity. The UK accounts for about 95 per cent of the EU's imports of sugars and sugar confectionery from CARICOM. On the Pacific side, Fiji, sells the bulk of its raw sugar to the UK through a direct contract between the Fiji Sugar Corporation and Tate & Lyle Sugars in London.

The CARIFORUM and Pacific-EU EPA sugar suppliers enjoy favourable market conditions in the EU: DFQF access under these agreements, plus higher prices as a result of production quotas.¹⁰ The impact of Brexit will, therefore, depend on whether the UK continues to apply similar EU policies. But Brexit is not the only external shock that will affect ACP sugar producers. The end of production quotas in October 2017 means that ACP producers risk losing their market share because of competition from increased EU output and imports from more efficient producers, especially Brazil.

6 Greene, G. (2015) "The CARIFORUM Economic Partnership Agreement: Lessons from Implementation". *Commonwealth Trade Hot Topics*, Issue 121.

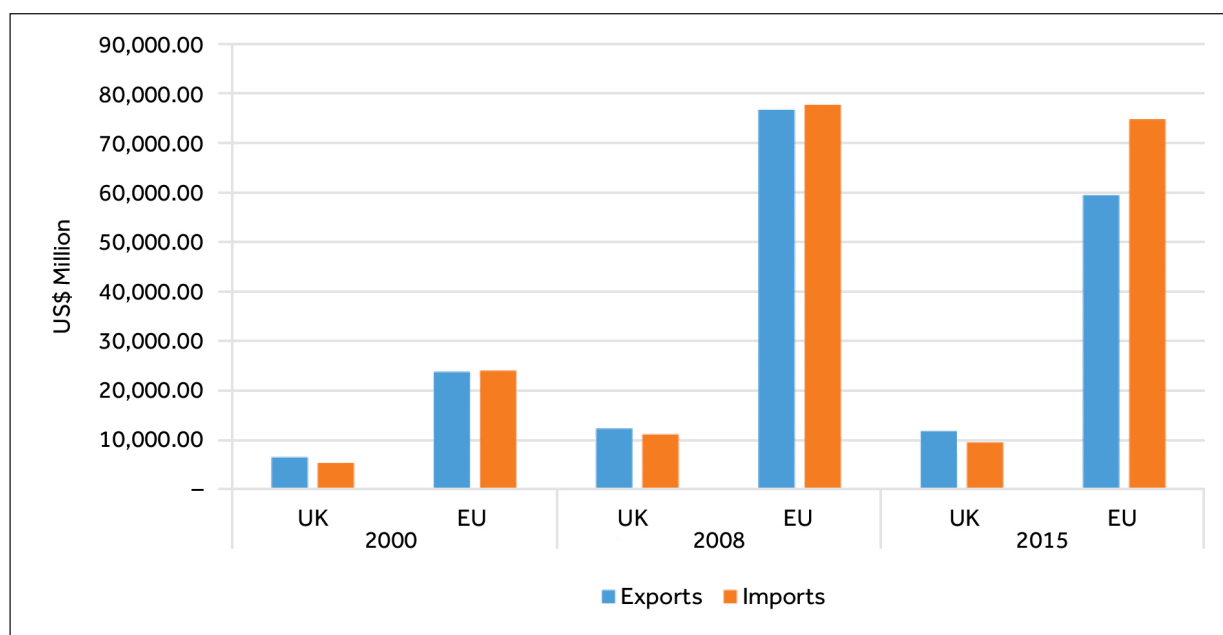
7 Global News Matters. Caribbean Research (2016) 'BREXIT Implications for the Caribbean – An Interview with Leading Caribbean Economist Marla Dukharan' (<https://globalnewsmatters.com/wp-content/uploads/2016/06/Marla-Interview.pdf>).

8 One major factor leading to this standstill has been disagreements over fisheries-related conservation and management measures.

9 Based on average EU imports between 2013–2015. However, the share of the EU market may be influenced by exports of just a few high-value products over this period.

10 Sugar is also important for sub-Saharan Africa, which exports about 20 per cent of its annual sugar production to the EU. Mauritius is one of the more efficient ACP producers with good longer-term prospects of supplying the EU post-quota. Swaziland and Zambia could find opportunities in the growing East African markets, such as Kenya and Tanzania.

Figure 2: Sub-Saharan Africa merchandise trade with UK and EU (2000-2015)



Note: EU means EU28 minus UK Source: Authors' calculations using data from UNCTADStat

EU, UK and sub-Saharan Africa EPAs

The EU, including the UK, remains a major trade, investment and development cooperation partner for many sub-Saharan African countries. These countries almost doubled their merchandise exports to the UK over the period 2000-2015, from US\$6.5 billion to about US\$12 billion (Figure 2), while overall exports from sub-Saharan Africa to the EU have grown from just over US\$30 billion to US\$71 billion. Despite its relatively low market share compared with the overall EU market, the UK is an important export destination for several sub-Saharan African countries. More than 40 per cent of exports from Botswana and Seychelles to the EU are destined for the UK, while another five countries send more than 20 per cent of their EU exports to the UK: The Gambia (32.5 per cent), Equatorial Guinea (32.4 per cent), Mauritius (29.3 per cent), Kenya (28.7 per cent) and South Africa (26.3 per cent).¹¹ Several countries also depend heavily on the UK market for exports of particular products to the EU, such as tea (Kenya and Malawi), fresh vegetables (Kenya), processed fish products (Ghana, Mauritius and Seychelles), fresh or frozen beef (Botswana and Namibia), gold products (South Africa) and diamonds (Botswana and Zambia). Southern African citrus producers sell about 10 per cent of their overall exports to the UK.

In 2014, the EU concluded three regional EPAs with the Southern African Development Community (SADC), the East African Community (EAC) and

West Africa. The EU set a deadline of 1 October 2016 to sign and ratify these agreements, after which the EU would revert to higher Generalised System of Preferences (GSP) duties for non-LDC African countries.

All SACU parties to the SADC EPA have ratified the agreement and it was provisionally implemented on 10 October 2016. In West Africa, Heads of State from the Economic Community of West African States (ECOWAS) endorsed the EPA for signature, but The Gambia, Mauritania and Nigeria have not yet signed, amid concerns that the EPA will harm their industrialisation. To avoid higher GSP duties, Côte d'Ivoire and Ghana ratified the 2007 Interim EPAs. In future, this may have implications for the ECOWAS common external tariff.

The EAC EPA is a full 'regional' EPA, which means that all five EAC members must collectively sign the agreement before it can be implemented. Kenya has ratified and Rwanda has signed the agreement, while Tanzania has declared it will not do so, fearing the consequences for its revenues and domestic producers and industries. A Summit of EAC Heads of State on 8 September 2016 requested a three-month extension to clarify some of the members' concerns and called on the EU not to penalise Kenya. Although the European Parliament extended the deadline for Kenya to ratify the EAC EPA to 2 February 2017, the agreement was ratified on 20 September 2016.

¹¹ See footnote 9.

But Brexit may complicate things still further for Kenya. In 2015, the UK received 16.5 per cent of total EU imports from the five EAC members (US\$2.6 billion) and about 28 per cent of all EU imports from Kenya. Kenya's most important exports to the EU are black tea (with about 80 per cent of its exports going to the UK), fresh or chilled beans (58 per cent), fresh cut roses and buds (16.5 per cent) and other fresh or chilled vegetables (80 per cent). Because the UK absorbs just under 30 per cent of Kenya's exports to the EU (and this includes the bulk of its major exports to Europe), Kenya's overall exports to the EU are bound to decline post-Brexit. This may upset the balance of liberalisation commitments in the EAC EPA if the UK is no longer a party to the agreement.

Given the possibility of a 'smaller' EU Single Market and related trade flows, several other EPA signatories with strong export exposure to the UK may have similar concerns if EPAs exclude the UK in the future. For example, 241 South African products are imported only into the EU by the UK, including about 98 per cent of its largest single export to the EU, namely gold products, including gold plated with platinum (CN71081310). Kenya has 213 products and Nigeria, yet to sign an EPA, 203 products destined only for the UK market in Europe.¹²

Most exports from sub-Saharan Africa to the EU currently receive DFQF market access under the EPAs, where these have been signed, or the EBA scheme for LDCs. In the absence of similar treatment post-Brexit, a range of products could face higher MFN duties in the UK market, as well as competition from non-ACP developing countries. At a broad level, the products most vulnerable to higher average EU/UK MFN duties, as listed below, include:

- fish and seafood products (11.21 per cent)
- floricultural products (5.94 per cent)
- edible vegetables (7 per cent)
- meat, fish and seafood prepared food products (13.83 per cent)
- vegetable, fruit and nut prepared food products (13.4 per cent)
- tobacco and tobacco products (21.46 per cent)
- carpets (7.38 per cent)
- clothing (11.6 per cent)
- footwear (9.95 per cent)
- aluminium (6.45 per cent)
- vehicles (6.37 per cent)

Any erosion of preferences in the UK market for many of these value-added products could have an adverse impact on the continent's plans for structural economic transformation, as outlined in the African Union's development plan, *Agenda 2063*.

The potential impact on ACP exports

The UK is an important export destination for some ACP countries. As noted earlier, in the absence of equivalent market access as the EPAs post Brexit, many of these countries may face higher MFN duties and competitive pressures in the UK market. Based on average annual EU imports in 2013–2015, 22 ACP countries, excluding the LDCs, face a potential calculable MFN tariff hike equivalent to more than 1 per cent of their total exports to the UK. In effect, these countries could face a 'new tax' of about US\$250 million. In absolute terms, South Africa may have to pay the largest import duties (about US\$80 million). Although they export considerably less than South Africa, two fellow SADC EPA states, Swaziland and Namibia, would also be impacted, facing a potential 'tax bill' equal to 8 per cent or more of their exports to the UK. However, proportional to current exports, two ESA EPA members would be the worst affected: Seychelles, followed by Mauritius.¹³

UK policy options for EPA countries

There are various ways to frame and shape the UK's future trading arrangements with the ACP to avoid such adverse outcomes. For the LDCs, perhaps the best option would be for the UK to devise its own GSP that builds upon and improves current arrangements for the world's poorest countries, such as the EU's EBA scheme. Post-Brexit, the UK Government should at least maintain this level of market access for LDCs. However, it could go further by introducing relaxed and more generous rules of origin (e.g. Australia and Canada require recipient countries to add only 25 per cent local value for goods to qualify for duty-free access) and reducing non-tariff barriers. The UK's offer of trade preferences should be extended to services, in line with the agreed LDC Waiver under the World Trade Organization (WTO).

One key issue is whether the UK can accede separately to existing EPAs¹⁴ or install EPA-replicas for ACP countries that have signed the deals with

¹² These products are defined at the Combined Nomenclature (CN) 8-digit code. CN is the EU's classification of goods, which meets requirements in terms of external trade statistics (both intra- and extra-Community) and customs tariffs.

¹³ Based on the information provided in Stevens, C. and Kennan, J. (2016) 'Trade Implications of Brexit for Commonwealth Developing Countries'. *Commonwealth Trade Hot Topics*, Issue 133.

¹⁴ The legal basis for this is uncertain (see Stevens and Kennan, *ibid.*)

the EU. While the existing EPAs could provide readily available frameworks, this would re-open negotiations on many contentious issues, as – given the market size – the UK would not have the same bargaining position as the EU, and the process could drag on for years. Some have also argued that rather than strengthening regional integration in Africa, the EPAs have actually fragmented the existing Regional Economic Communities by establishing five different reciprocal trading regimes with Europe. The UK will have to consider not only whether the replication of EPAs is possible, but whether it should be pursued.

To avoid any immediate adverse outcomes, the UK could explore offering temporary, unilateral preferential access to developing countries that currently have access to the UK market through FTAs and EPAs. Even though this violates WTO rules, the EU has used various Market Access Regulations to provide such access for some ACP countries since 2007, pending the signing and ratification of EPAs.¹⁵ A more WTO-consistent approach would be for the UK to request waivers to grant non-reciprocal preferences to ACP developing countries. There are precedents for such arrangements: the USA has WTO waivers for its trade preference initiatives with the Caribbean (i.e. the Caribbean Basin Initiative) and Africa (i.e. the African Growth and Opportunity Act, AGOA).¹⁶ This option would avoid the need for difficult negotiations with ACP countries at this stage, while ensuring the continuity of their preferential treatment.

Once the short- to medium-term transitory measures are in place to provide policy continuity and avoid trade disruptions, one medium- to longer-term option for the UK could be to negotiate development-friendly and WTO-compatible trade agreements with ACP regions. Under the African Union's formal integration plan, member states aim to launch an African Customs Union by 2019.¹⁷ While this is an extremely ambitious

target with many challenges, such a customs arrangement could provide an opportunity for post-Brexit UK and Africa to negotiate a single Free Trade Agreement (FTA) in goods that will also reinforce African continental integration. This agreement could also frame the UK's approach to overall Aid for Trade to help African countries build and diversify their productive and supply capacities. The USA also envisages greater reciprocity in its trading relations with sub-Saharan African countries when AGOA IV expires in 2025.¹⁸ However, given the continent's ambition for structural transformation and the concerns raised by LDCs about reciprocity, it is unclear whether African countries would be willing to negotiate an agreement that liberalises all trade substantially, as required by the WTO. On the UK's side, it is unclear whether a trade agreement that excludes services and investment would satisfy the commercial interests of post-Brexit Britain.

One key challenge for many ACP exporters is compliance with the high standards and regulations required for access to the EU market. In the interim, the UK could retain most of the EU's current body of trade-related standards. However, ACP suppliers feel that some of these regulations are unnecessarily onerous and even protectionist, and should be reviewed or rescinded. For example, citrus exports from South Africa and Swaziland to the EU have been impaired by stringent sanitary and phytosanitary (SPS) standards for citrus black spot, losing market share to Spain as a result.¹⁹

Post-Brexit, the UK would have the autonomy to develop its own set of agricultural regulations based on internationally recognised science and in accordance with the WTO. Since the UK is not a citrus producer and relies on food imports, there may be a case for greater flexibility and for rescinding some EU measures regarded as unfair or protectionist by ACP producers, if this does not jeopardise plant health and food safety. For other goods imports,

15 Jones, E. (2016) 'Brexit: opportunity or peril for trade with developing countries' in Mendez-Parra, M., te Velde, D. W. and L. Alan Winters (eds), op. cit.

16 A WTO waiver permits the USA to provide duty-free treatment to eligible products originating in beneficiary Central American and Caribbean countries and territories from 1 January 2015 until 31 December 2019. In November 2015, the WTO's Goods Council approved a request from the USA for the extension of a 2009 waiver for AGOA. AGOA IV has been renewed for 10 years, up to 2025. The shortcomings of AGOA should however be noted: it is unilateral, sets political and economic eligibility criteria, and excludes several important products of export interest to Africa.

17 The 1991 Treaty Establishing the African Economic Community (AEC), known as the Abuja Treaty, provides the blueprint for Africa's economic integration. The Abuja Treaty lays out a roadmap to establish the AEC through six stages over a period of 34 years, up to 2028. Negotiations to establish the Continental Free Trade Area (CFTA) by 2017 are underway. The CFTA is a precondition for progressing to a customs union. Both targets are extremely ambitious, and will be complex and challenging to achieve.

18 The AGOA Extension and Enhancement Act of 2015 directs the USA Trade Representative to begin the process of negotiating reciprocal trade agreements that are similar to the EU-EPAs with sub-Saharan African countries.

19 'SA cuts citrus exports to Spain', 18 March 2015. At: <http://www.fin24.com/Companies/Agribusiness/SA-cuts-citrus-exports-to-Spain-20150318> (accessed 2 September 2016).

the UK and the EU could consider mutual recognition of standards, which would reduce ACP trade costs by requiring 'one-time only' compliance and certification.

Conclusion

The UK is an important trade partner for some ACP countries and LDCs, and it is imperative, therefore, that Brexit does not result in trade disruptions or unfavourable outcomes for these countries, especially through the imposition of higher MFN duties. UK policymakers should reassure these countries that their market access to the UK following its withdrawal from the EU will be just as favourable as the existing arrangements. Given all of the uncertainties around Brexit, such reassurances of trade continuity are vital for investment decisions and future planning.

It is also important that the UK strengthens its role in promoting trade-led economic development. The country has always recognised and championed the special needs and challenges faced by ACP countries, particularly those in Sub-Saharan Africa, as well as LDCs and small states. It is one of the few high-income countries that fulfils the UN target of providing 0.7 per cent of gross national income as overseas development assistance. The UK has also played a critical role in advocating for Aid for Trade as a way to help developing countries with supply-side capacity building. Post-Brexit, it is crucial that the UK continues its bilateral trade and development cooperation with developing countries, especially the world's poorest nations.

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