THE EBA'S MODEST IMPACT:
A MULTIPLE STREAM THEORY UNDERSTANDING OF THE EVERYTHING BUT ARMS INITIATIVE WITHIN THE EUROPEAN UNION'S BROADER AGRICULTURAL TRADE POLICY ENVIRONMENT

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Table of Contents

List of Acronyms

ACP: Africa-Caribbean-Pacific

CAP: Common Agricultural Policy

EBA: Everything But Arms (European Council regulation 416/2001)

EEC: European Economic Community

EPA: Economic Partnership Agreement

EU: European Union

EC: European Council

GATT: General Agreement on Tariffs and Trade

GSP: Generalized Scheme of Tariff Preferences

MS: Multiple Stream Policy-Making Theory

LDC: Least Developed Country

WTO: World Trade Organization

Abstract

This paper examines the EU's Everything But Arms (EBA) initiative, which provides quota and tariff free access to the EU common market for most exports from Least Developed Countries' (LDC's) as part of the EU's 'aid through trade' development initiatives. Guided by the Multiple Stream theoretical approach to policy-making, the paper also argues that endogenous and exogenous spillover effects made the EBA ineffective at delivering the economic benefits hoped of it. The argument presented is that the EBA should be understood within a broader policy perspective and through the lens of agricultural trade. An assessment of the EU's agriculture and trade policy environment shows that the EBA could never deliver anything but modest economic benefits for LDC's. Spillover from pre-existing ACP-EU preferential market access agreements means that the EBA only offers a modest increase in quota and tariff free access to the EU market for most LDC's. The EU's Rules of Origin and the EBA's Safeguard clause ensure that any gains to LDC's do not come at the expense of EU producers or adversely affect EU trade or financial interests. The Rules of Origin also create significant administrative burdens for the poorest nations. Additionally, continuing CAP reforms are making the EU a less profitable market for LDC agricultural goods, even if they are helping to decrease protectionism and reduce production supports that provide an advantage to EU agricultural producers over LDC producers.

1) Introduction

The Everything But Arms (EBA) regulation was adopted by the European Union (EU) on 28 February, 2001.[1] Officially known as European Council (EC) regulation 416/2001, the EBA was subsequently incorporated into the EU's Generalized Scheme of Tariff Preferences (GSP), which governs European preferential trade agreements. The EBA extends non-reciprocal tariff and quota free market access to the EU common market to countries formally recognized by the United Nations as being Least Developed Countries (LDC's). Currently, there are 48 countries that are recognized by the UN as LDC's.[2] The EBA grants LDC's preferential market access to the European market for all products except armaments and munitions, with gradual and controlled incorporation of access for three product areas deemed to be 'sensitive' by the EU; sugar, bananas and rice. The non-reciprocal benefits extended to the LDC's are not subject to a time limit and are exempt from the periodic review of the EU's Generalized Scheme of Tariff Preferences, which essentially make the EBA a permanent preferential market access concession to LDC's.[3]

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[1] From European Union website, accessed January 16, 2012. Available at http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/everything-but-arms/

[2] From UN-OHRLLS website, accessed May 26, 2012. Available at http://www.unohrlls.org/en/ldc/25/

[3] From European Union website, accessed January 16, 2012. Available at http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/everything-but-arms/

The official EU language states that the EBA was created to foster economic development among LDC's through increased trade, which will, in theory, increase the export earnings of LDC's, improving their terms of trade balance, and encourage economic development.[4] As such, it is an 'aid through trade' mechanism, providing a market access incentive to LDC's to enable them to increase output, improve capital and increase their participation in the globalized economy, with the goal of lifting LDC's out of extreme poverty.

When it was first introduced, EU trade officials described the EBA as "a worldwide first"; the EBA was the first comprehensive example of a developed nation (or, more accurately, a supranational entity) granting quota and tariff free access to its market to all LDC's, and for nearly all goods. Former EU Trade Commissioner Pascal Lamy, the official chiefly responsible for the EBA, stated that "there has been plenty of talk about how market access for poor countries is critical if we are to tackle their growing marginalization in the globalizing economy...[I]t's time to put access to our markets where our mouth is. That means opening up across the board and for all the poorest countries."[5]
Mr. Lamy stated at a press conference unveiling the EBA that "this [the EBA] sends a message to the rest of the world that we are serious about getting the

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[4] From European Union website, accessed January 16, 2012. Available at http://ec.europa.eu/trade/wider-agenda/development/generalised-system-of-preferences/everything-but-arms/

[5] Pascal Lamy, as quoted in Holland, Martin. The European Union and the Third World, p.226-227

most disadvantaged to share in the fruits of trade liberalization."[6]

Two important points stand out from Mr. Lamy's statements. The first is that trade liberalization is seen as the key driving force by which LDC's can be assimilated into the global economy and be lifted out of extreme poverty. The second, and more telling point, is the belief that market access is sufficient to achieve this end. This seems to indicate that the EBA initiative is based on an outlook that conflates liberalization with market access; as one that views quotas and tariffs as the only impediments to free and fair trade.

Although the EBA is no doubt a well-intentioned effort, it has been largely ineffective at achieving its intended vision of encouraging economic development, increasing trade volumes and increasing economic welfare in LDC's. The question of how effective the EBA has been at increasing the welfare of LDC's has largely been answered. The EBA has been studied in depth from economic welfare perspectives; there are scores of papers[7] that employ various economic modeling tools to estimate the benefits accrued to LDC's by the EBA. The consensus arrived at from these studies is that the welfare gains to LDC's attributable to the EBA have been extremely modest. However, this answer begs another question that is seldom addressed in the EBA literature: the question of why the EBA policy initiative, despite such bold initial prognostications from EU officials, is only capable of delivering modest economic benefits to LDC's.

In order to answer that question, the EBA must be understood in a wider

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[6] Pascal Lamy, as quoted in Flint, Adrian. Trade, Poverty and the Environment - The EU, Cotonou and the African-Caribbean-Pacific Bloc, p.69

[7] See, for example, Page and Hewitt, 2002; Cernat et al, 2003; Trueblood and Somwaru, 2002; Benton, 2003; Graveda and Martinez-Zarzoso, 2010

policy context, through an agricultural trade lens, and informed by an understanding of Multiple Stream (MS) policy-making theory, which helps explain how the EBA was constrained by ‘policy spillover’. Pre-existing EU policies and trade agreements, as well as its exclusive emphasis on market access as a solution, seriously limit the EBA’s ability to reduce the extreme poverty suffered by the LDC’s and increase their participation in a globalized economy. It will be argued in this paper that the EBA is not capable of being as successful as some of its earlier supporters envisioned, and in order to understand why, we must understand the EU’s policy environment pre-EBA, and the policy spillover effects both caused by the EBA, and in turn, impacting upon the EBA. Rather than being a “world first”, game-changing policy initiative, as described by Pascal Lamy in 2001, the EBA is a modest increase of pre-existing tariff and quota-free preferential market access to the EU market for a small number of the world’s poorest countries, and its emphasis solely on market access cannot address deeper trade distorting policies that create an economic disadvantage for LDC exports for the products the EBA targets. This is why the EBA has been unable to deliver on the promises of its creators.

2) Multiple Streams Theory of Policy-Making

Multiple Streams theory (MS) posits that policy adoption is the result of a convergence of three separate ‘streams’: a problem stream, a politics stream and a policy stream.[8] MS relies on a policy entrepreneur having the right idea at the

[8] Ackrill, Robert and Adrian Kay. “Multiple Streams in EU Policy-Making: The Case of the 2005 Sugar Reform” European Journal of Public Policy, 18:1, January 2011, p.72

right time that addresses the right problem. Policy entrepreneurship is a context specific activity, whereby the ideas of a policy entrepreneur become pertinent due to the convergence of the three streams. The convergence of the three streams opens up a 'policy window', which provides a policy entrepreneur with an opportunity to have their policy adopted. A policy window is described as "a temporal conjunction of separate sub-policy processes: agenda setting, alternative specification and decision making."[9] Both endogenous and exogenous factors influence the timing of convergence, and help determine the size and duration of a policy window.

Two key features of MS are useful in helping explain why the EBA has been only modestly successful, ambiguity and policy spillover. The concept of ambiguity, in an MS context, describes the lack of clarity concerning which ministry or department is responsible for the governance of a policy arena, or as Ackrill and Kay put it "the hierarchical structure of authority between DG's (Directorates-General, the EU equivalent to Government Ministries) in cross-cutting cases is ambiguous."[10] That is to say, several government departments may have the authority and ability to influence a specific policy arena.

Ambiguity is important because it enables another key feature of MS theory, namely policy spillover. Policy spillover occurs when "a policy decision taken in one arena impacts directly on policy decisions in others."[11] All government departments with cross-cutting authority will be affected, constrained and must

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[9] Ibid, p. 72
[10] Ibid, p. 73
[11] Ibid, p. 73

abide by the decisions of any other department in a specific policy arena. Once a policy decision is made by one government department, "a precedent spills over from one area into an adjacent one."[12] As such, policy spillover can causally lead to changes in the same policy issue but in a different policy area.[13]

Policy spillover is an important concept in helping to explain how decisions made by the EU's DG-TRADE, and DG-AGRI helped limit the potential economic gains for LDC's under the EBA. In a sense, a policy spillover 'boomerang' is one of the key reasons why the EBA has met only very limited success in its purpose, as will be expanded on in further detail in the CAP reform discussion below. The policy spillover of the decision to implement the EBA by DG-TRADE created the policy, problem and politics environment for greater CAP reforms by DG-AGRI, including substantial reforms to the Sugar Protocol, which had the consequence of significantly reducing the price of sugar in the EU, and thus eroded the price premium received by LDC sugar exports to the EU market. Additionally, pre-existing preferential trade policies based on historical colonial relationships between European nations and members of the African-Caribbean-Pacific (ACP) group of nations further serving to erode any potential benefits for LDC's, especially those not a part of the ACP, by effectively having to compete against richer developing nations.

Policy spillover can be exogenous as well as endogenous. That is to say, that spillover can occur from one sovereign to another sovereign, not just within a

[12] Ibid, p.75
[13] Ibid, p.76

sovereign political entity.[14] Exogenous spillover helps to explain the EBA being the 'right idea at the right time'. Exogenous policy spillover from other sovereign nations and international organizations created the right political environment for the EBA, as a policy, to emerge. Dating back to the 1990's, concerns grew over the lack of integration on the part of LDC's into the globalized world economy.[15] The introduction of policies such as the African Growth and Opportunities Act (AGOA) by the United States in May of 2000[16] helped create the appropriate political environment for the EBA. Perhaps in a game of one-upsmanship, the EU Commissioner of Trade, Pascal Lamy, offered up a broader, more encompassing policy in the form of the EBA, which covers both more countries and more products (at least for the 8 Asian LDC's) than the AGOA.

Although MS theory can explain why and how a policy is successfully adopted, it cannot predict or explain why a policy is successful in achieving its desired outcomes. While the EBA may have been, for various reasons, the 'right idea at the right time' from an MS perspective, it has not been an effective policy in terms of achieving its aims, namely helping to significantly increase trade flows, economic welfare and reduce poverty in LDC's.

3) The EU's Policy Environment pre-EBA

The EBA fits into a broader policy environment that has been in place since the

[14] Ibid, p.75
[15] Ibid, p.80
[16] Mattoo, Aaditya et al. "The African Growth and Opportunities Act and its Rules of Origin: Generosity Undermined?" p. 67

creation of the European Economic Community, the predecessor to the European Union. As such, the EBA's ability to increase market access for the LDC's clarifies special cases within prior legislation and trade agreements undertaken by the EU. Specifically, the EU's Common Agricultural Policy (CAP) which governs agricultural policy within the EU, the Generalized System of Preferences (GSP), which prescribes the EU's trade rules and tariff and quota levels for preferential market access agreements, and the pre-existing preferential market access agreements the EU had previously negotiated with the Africa-Caribbean-Pacific (ACP) group of nations (specifically the Lomé Conventions and Cotonou Agreement), all have a strong spillover effect limiting the benefits the EBA can deliver to beneficiary LDC's. The EBA is a reflection of, and is constrained by these policies and preferential market access agreements in terms of the range and depth of the economic benefits the EBA is capable of delivering to LDC's.

Market access alone is not sufficient for increasing welfare in LDC's. Granting tariff and quota-free market access does not mean that LDC products are able to compete on an equal footing with domestic EU agricultural products. The EU's 'aid through trade' paradigm, which focuses solely on market access as a means of increasing LDC exports and participation in the globalized economy, does not to address other important factors that create barriers to trade and create a disadvantage for LDC agricultural exports covered by the EBA. The EBA does not address direct support and export subsidization policies the EU has in place for a great many of the products granted preferential market access under the EBA. These policies create a playing field that benefits European producers to the detriment of LDC producers, both in the European market and in the global marketplace. The effects of these policies are especially harmful because not only do they help to undercut LDC producers, they also have broader macro-economic effects on world markets, most of which are very negative to LDC producers. By not addressing direct support and export subsidy policies, the EBA superficially appears to grant considerable beneficial concessions to LDC's, but as numerous economic studies have shown, the appearance does not translate into reality.

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decompressor
are needed to see this picture.

3) Why Analyze Policies Affecting Agricultural Trade?

This paper focuses on the policies affecting trade in agricultural goods between the EU and the LDC's. Why focus on the analysis on agricultural goods? In terms of deriving benefits from increased preferential market access granted by the EBA, the agricultural sector lends itself well to analysis for several reasons. First of all, for a number of reasons, LDCs are not well positioned to exploit a large number of the preferences granted by the EBA because they generally lack “the technology and other productive capacities to shift to manufactures for export."[17] As a result, LDC’s continue exporting mainly agricultural commodities and other raw materials. For many LDC’s, the agricultural sector is among the most important sectors of their economy. This is especially true as it pertains to the general trade relationship LDC’s have with the EU. Exports from LDC’s to the EU are primarily composed of raw materials and agricultural products.[18] In fact, food exports alone account for approximately 10% of LDC exports.[19] When all agricultural goods are factored in, including non-food items, the figure rises to 17%.[20] In the year 2000, the EU was the destination for over 70% of all LDC agricultural exports.[21] Considering that nearly 40% of total LDC export goods are destined for the EU market, the fact that approximately 70% of LDC agricultural goods are exported to the EU provides a strong rational for examining the benefits the EBA provides to the agricultural sector of LDC’s, rather than any other sector.[22]

Second, the EBA overwhelmingly targets agricultural goods for tariff and

[17] Anne-Catherine Claude, as quoted in Agazzi, Isolda. “Everything but Arms Deal Doesn’t Benefit Enough People” From IPS website, accesses February 17, 2012. Available at http://ipsnews.net/print.asp?idnews=52166

[18] Jensen, Trine and Wusheng Yu. “ Is the Everything But Arms Initiative the way to go for Least Developed Countries in the WTO negotiations?” From WTO Negotiations and Agricultural Trade Liberalization: The Effects of Developed Countries Policies on Developing Countries, p. 285

[19] Trueblood, Michael and Agapi Somwaru. “Modelling the EU’s EBA Initiative for the LDC’s”, p.4

[20] Ibid, p.4

[21] Cernat, Lucian et al. “The EU’s EBA Initiative and the Least Developed Countries” p.4

[22] Trueblood and Somwaru, p.11

quota-free access to the EU. In fact, for the great majority of the LDC's, all of the products granted preferential market access under the EBA are agricultural products.[23] The EBA increases the number of non-dutiable products from most LDC's by 919 tariff line items.[24] Some context is required here. There are currently 48 countries in the world that are considered to be "Least Developed Countries" by the United Nations. Thirty-nine of these 48 LDC's already enjoyed tariff and quota free market access for the majority of their goods under pre-existing trade agreements signed before the EBA initiative became European Union law. For these 39 countries, the EBA grants tariff and quota free status to 919 additional products, all of which are agricultural goods. The remaining 9 LDC's who did not enjoy preferential market access to the EU pre-EBA now enjoy the same preferential market access post-EBA as the other 39 LDC's. The one area of similarity between all the LDC's, in terms of receiving preferential market access under the EBA, is on the 919 'new' tariff line products.

Further to the point, tariff and quota controls generally tend to be much higher for agricultural commodities than they do for minerals and manufactured products.[25] The reduction of larger quota and tariff barriers should lead to greater benefits for LDC's. To analyze the impacts of the EBA on another economic sector risks incorporating a strong bias, since 9 LDC's have gained preferential market access to over 10,000 tariff line goods, while 39 LDC's have seen their

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[23] Cernat et al, p.5

[24] Jensen and Wusheng, p. 286

[25] Milner, Chris and Wyn Morgan. Agriculture Export Subsidies and Developing Countries Interests. p.14

preferential market access increase by less than 10% of that figure.

The EBA has delayed and controlled access for three product areas deemed to be ‘sensitive‘ by the EU: sugar, bananas and rice. In total, these three products represent 43 of the 919 tariff line items granted preferential access under the EBA.[26] All 43 products have since received complete tariff and duty free status, most recently in 2009, when sugar quotas for LDC’s were fully eliminated. Since these three product areas pertain to agricultural goods, and since nothing else (except arms and ammunition) is excluded from the EBA, it makes sense to examine the benefits the EBA presents to the agricultural sector instead of any other sector.

4) Agricultural Exceptionalism and the ‘Three Pillars’ of EU Agricultural Support

Understanding the EBA from an agricultural trade policy point of view requires understanding the agricultural policy framework in effect in the EU. This section details how the EU’s Common Agriculture Policy (CAP) has influenced the rules and structure of the EBA vis-à-vis agricultural products. It also helps to explain why agricultural sector economic benefits to LDC’s have been underwhelming, and why the market access mechanisms of the EBA alone have failed to deliver anything but mediocre economic gains for agricultural producers in LDC’s. The EBA’s focus on market access does not address other trade distorting policy tools that limit the benefits the EBA can offer to LDC agricultural producers.

[26] Ibid, p.286

The EU's agricultural policies, especially EU farm policies, have an important and substantial effect on how much benefit the LDC's can derive from the EBA's access for agricultural products. The EU, and most other developed countries, treat the agricultural sector of their economies much differently that other sectors. This special treatment is often referred to as 'Agricultural Exceptionalism', which is defined as "the special treatment of agriculture and agricultural products at the national, supranational (i.e. the EU) and global levels, as compared to other sectors of the economy".[27] Agricultural Exceptionalism holds that farming is qualitatively different than most other sectors of economy in modern society.[28]

There are two main reasons for treating the agricultural sector as exceptional. The first has to do with the fact that it is subject to volatile weather and market conditions not experienced by other economic activities. This leaves the sector exposed to high risks of production and price variability. High production and price variability are coupled with what agricultural economists call the low income-elasticity of demand for food goods means that consecutive bad harvests can financially ruin many farmers, and could potentially threaten a nation's food supply. Low elasticity of demand refers to the behaviour of consumers as relates to the price of agricultural products, especially food. When the price of a specific food good increases, consumers tend to stop purchasing

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[27] Daugbjerg, Carsten and Alan Swinbank. "Curbing Agricultural Exceptionalism: The EU's Response to External Challenge" Paper presented at the International Political Economy Society, September 2006, Princeton University, p.2

[28] Ibid, p.2

that good and substitute it with a similar, but different and cheaper good. Agricultural Exceptionalism seeks to protect agricultural producers by assuring producers a stable price regime for their products. Therefore, the “first rationale for treating agriculture as an exceptional sector is tied to the specific interests and needs of farmers”.[29]

The second rationale relates to national interest. Central to the Agricultural Exceptionalism paradigm is the core premise that the agricultural sector “contributes to the broader national interests and goals” of the state.[30] Primary among these interests are a secure and safe food supply with stable and reasonable prices. Avoiding food shortages, high food prices and dependence on foreign food sources is an essential policy outcome of the Agricultural Exceptionalism paradigm. According to the paradigm, “unregulated *[read unprotected]* markets will fail to deliver these valued objectives in food supply.”[31] Controlling the mechanisms and incentives of production and output are the instruments used to achieve these ends.

It is important here to note the different types of agricultural policies that exist in most developed nations, the EU being no exception (in fact the CAP is often considered to be the ‘model’ of protectionist agricultural policy among

[29] Skogstad, Grace. “Ideas, Paradigms and Institutions: Agricultural Exceptionalism in the European Union and the United States”from Governance Volume 11, Issue 4, pages 463–490, October 1998. p.468

[30] Ibid, p.468

[31] Daugbjerg and Swinbank, 2006, p.3, italics added

developed nations).[32] Agricultural policy can broadly be broken down into two main categories, farm policy and food policy. Farm policy determines the extent to which farmers and agricultural producers are protected, incentivized and subsidized by a national, or, as in the case of the EU, a supranational government. Food policy, on the other hand, refers primarily to issues of food safety and food security. For example, sanitary and phyto-sanitary regulations outlining minimum safety standards for food products falls into the category of food policy. Farm policy is the focus of the analysis for this section, food policy is not addressed in this paper.

There are a variety of policy options available to nations upholding the mantra of 'Agricultural Exceptionalism'. Andrews et al note that agricultural support is three-pronged in the EU, as in most other developed counties. The 'Three Pillars' of agricultural support are: 1) import measures that control market access via tariffs and quotas, 2) domestic support systems, which include price supports, income supports and subsidized inputs and transportation, and 3) export subsidies, which are payments made to suppliers to encourage them to export their agricultural products.[33] All three of the support mechanisms transfer funds to producers, whether from consumers or from taxpayers.

Andrews et al demonstrate that "[t]he same production, consumption and trade effects can be obtained in many ways through import measures (pillar #1), domestic support measures (pillar #2), export subsidies (pillar #3) and

[32] See Civitas facts on CAP available at http://www.civitas.org.uk/eufacts/FSPOL/AG3.htm, Josling and Anderson, "The EU's Common Agricultural Policy at Fifty: An Outside View"; Stead, David, "Common Agricultural Policy" available at http://eh.net/encyclopedia/article/stead.cap

[33] Andrews et al, p.7

combinations of these measures."[34] Furthermore, the pillars are interchangeable, as "it is possible to substitute domestic support measures for market access measures or export subsidies."[35]

The most important thing to note about the 'Three Pillars' is that they all create trade distortions in the EU agricultural market that affect LDC agricultural exports. Import measures affect trade by limiting market access. However, this pillar is effectively eliminated for LDC producers by the EBA, leaving two remaining pillars. Domestic support mechanisms can have a number of effects, depending on which mechanism is employed. While price supports artificially increase the cost of commodities on the domestic market, income supports and the subsidizing of inputs artificially reduce the costs of agricultural products in a domestic market. Many forms of income support couple annual production to annual income. This incentivizes agricultural producers to over-produce, knowing that they will not be adversely affected financially, and can sell at a much lower price than would otherwise be the case. Subsidized inputs have the same effect by reducing the cost of production to the producer, resulting in a lower domestic market price. This provides an advantage to domestic EU producers over LDC competitors, and as Andrews et al show, helps to mitigate the advantages provided LDC agricultural producers under the EBA.

Other domestic support mechanisms are beneficial to LDC agricultural producers. Some CAP policy tools such as minimum/guidance prices and quantitative restrictions (also known as supply management) serve to increase

[34] Ibid, p.7

[35] Ibid, p.8

domestic EU prices for agricultural goods significantly above world market prices and provide LDC producers with what amounts to a double benefit. First, LDC producers are granted quota and tariff free access under the EBA, then, under CAP measures they receive what amounts to a premium price for their agricultural goods.[36] Of course, this double benefit affects only agricultural goods produced in both the EU (and governed by quantitative restrictions) as well as in LDC's, and does not cover the majority of agricultural goods produced by LDC's.

EU price supports, when coupled with the EBA's preferential market access, provide a substantial benefit to LDC agricultural producers, as "[p]referential access for exports to developed countries with high internal prices provides a premium to the countries receiving their access."[37] Further, LDC products are in what is essentially a limited competition marketplace, due to the fact that most other non-EU/non-LDC producers face high tariff walls and restrictive quotas. Unfortunately for LDC agricultural producers, the products that stand to deliver the greatest gains due to price supports are also the products deemed as 'sensitive' by the EU, and for which tariff and quota-free market access were granted incrementally over a number of years, namely sugar, rice and bananas. However, despite the short-term benefits this arrangement provides, this type of advantageous situation can ultimately have serious long-term negative effects on the beneficiaries, at both the micro and macro levels, as will be discussed below.

Export subsidies have two different effects on LDC agricultural exports to

[36] Ibid, p. 60

[37] Ibid, p.59

the EU that require analysis. Rather than reducing the domestic EU producers production costs, which enables producers to lower the price of agricultural goods, thereby making their goods more price competitive on the domestic market, EU export subsidies have actually helped to depress global market prices.[38] This has a mixed effect for LDC's. Because export subsidies depress global market prices, they make food cheaper everywhere, including in the LDC's. Some estimates put the price distortion effect of the EU's export subsidies at 5% on average, with certain commodities seeing much higher price distortions.[39] Depressed food prices means that citizens of LDC's not employed in the agricultural sector benefit from lower food prices. The effect that export subsidies have on the agricultural sector is quite severe. They not only reduce the earning potential of LDC agricultural producers, but they also serve to keep wages in the agricultural sector artificially low.[40]

The distinction between net food exporting and net food importing countries is an important consideration when discussing the effects of EU export subsidies on LDC's. If many LDC's were dependent on purchasing food off of the world market, the distorting effects of export subsidies might be seen as an overall benefit for LDC's, even if their agricultural sectors suffered as a result. However, of the 24 Net Food Importing Developing Countries (NFIDC's), only 1, Senegal,

[38] Milner and Morgan, p.1

[39] Ibid, p.14

[40] From *Reform the CAP* website, accessed June 12, 2012. Available at http://www.reformthecap.eu/issues/policy-instruments/export-subsidies

is an LDC.[41] This suggests that, on aggregate, Senegal would be the only net 'winner' of the current EU export subsidy regime, as it might theoretically benefit from paying policy-induced lower prices for its food imports, and while losing the least on its food exports. That only one LDC is a net food importing nation suggests that, on balance, export subsidies and the price distortions they create, are detrimental to LDC's overall, and certainly detrimental to their agricultural sectors.

Price distortions are one effect of export subsidies, the other distortion is seen in market share. Export subsidies tend to distort market share percentage in favour of the most subsidized, and thus lowest priced product.[42] This has the effect "reduc[ing] trade volumes and the number of agents/actors in the market, as well as subject[ing] the market to greater price variability."[43] The crowding out effect of export subsidies affects LDC producers the most. This is part of the reason why for most LDC's "the comprehensiveness of trade reform [in agricultural goods] is likely to increase the probability of net welfare gains." [44]

In the case of agricultural products, the EBA cannot address other trade-distorting areas, namely domestic support schemes and export subsidy programs. The only farm policy 'pillar' addressed by the EBA is tariff and quota protection for domestic producers from LDC agricultural products entering the EU

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[41] From FAO website, accessed June 12, 2012. Available at http://www.fao.org/trade/negoc_aoa_marrakech_en.asp#7

[42] Pearce, R and R. Sharma. "Module 3- Export Subsidies" from FAO document "Multilateral Trade Negotiations on Agriculture- A Resource Manual" from FAO website, accessed June 12, 2012, available at http://www.fao.org/docrep/003/x7353e/x7353e03.htm

[43] Milner and Morgan, p.20

[44] Ibid, p.19

domestic market. Yet, as has been discussed, "[i]ssues of market access are inextricably linked to the nature of domestic support program - one cannot argue for the elimination of border protection independently of reforming domestic support programs"[45] This was a concern raised by LDC's during the Doha Round Agreement on Agriculture negotiations, where LDC's sought the reduction of domestic supports and export subsidies that they felt unfairly disadvantaged LDC agricultural producers.[46]

5) EBA and CAP Reform

The CAP has undergone a series of reforms over the past 20 years designed to decrease the level of support and protection afforded to European agricultural producers. These reforms have also made the EU a less lucrative market for LDC agricultural exports and have helped erode the preferential market access granted to LDC's under the EBA. Reform of the CAP has been a pressing issue for the EU for a number of years and for multiple reasons, including pressure from trading partners and the WTO, as well as budgetary pressures and the Eastern Expansions of the EU in 2004 and 2007. These reforms naturally have an impact on the EBA in terms of agricultural exports from LDC's.

One of the primary aims of the CAP reforms has been to reduce the CAP's costs and its overall impact on the EU budget. The costs of protecting the EU's agricultural sector are massive, and consume the lion's share of the EU's annual

[45] Robison, Sherman and Karen Thierfelder. " The Effects of Domestic Agricultural Reform and Market Access on Trade and Production in Less Developed Countries", p.103

[46] Andrews et al, p.46-47

budget. For example, CAP related expenses in 2004 (12 years after the first significant CAP reforms) accounted for nearly 50% of the EU's annual budget.[47] Out of a total 2004 budget of € 101 billion, CAP expenditures equaled € 48.3 billion.[48] As of 2010, the CAP still accounted for approximately 40% of total EU budgetary expenditure.[49] Left unreformed, the costs of the CAP were set to rise dramatically after the expansion of the EU from 15 countries in 2003 to 27 countries in 2007.

Beginning with the MacSherry reforms of 1992, the EU has sought to modernize the agricultural sector and make it more market-oriented.[50] The MacSherry reforms reflected an understanding that the CAP's method of support was financially unsustainable, and risked bankrupting the EU. The MacSherry reforms focused primarily on shifting the instance of market price support from the EU taxpayer base directly to consumers. Further, the MacSherry reforms introduced direct farmer supports, but overall did little to liberalize the EU's market. The MacSherry reforms "involved shifts in support rather than reduction of support."[51] As a result, the EU remained very much closed to and protected from the world agricultural market after the MacSherry reforms. And the CAP remained extremely expensive.

Under the next round of CAP reforms, the Agenda 2000 reforms, the EU

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[47] Fransden and Jargensen, p. 42

[48] Ibid, p. 42

[49] Cantora Nicola et al. "CAP Reform and Development: Introduction, Reform Options and Suggestions for Further Research" Overseas Development Institute report, 14 May 2011, p. v

[50] European Commission Agriculture and Rural Development Website, accessed June 15, 2012. Available at http://ec.europa.eu/agriculture/cap-post-2013/index_en.htm

[51] Fransden and Jargensen, p. 54

sought greater liberalization for its agricultural market. Agenda 2000 was largely undertaken in order to bring the EU into conformity with WTO standards and to avoid the looming threat of a trade war with the United States that existed at the time.[52] Reforms to the CAP under Agenda 2000 included efforts to reduce export subsidies, a further reduction of price supports and attempts at decoupling farm income supports.[53]

The 2003 Fischler Reforms introduced non-distorting 'area payments' to farmers and herders.[54] Area payments provide income support to agricultural producers based on the size of their farms, rather than based on production output. These payments are considered to be decoupled since they essentially cut the link between support and production. Decoupled farm payments have some important effects on the EU agricultural market, which also impact LDC producers both positively and negatively. Area payments are seen to be non-distortionary because they are decoupled from production, are therefore do not provide farmers with an incentive to over or under produce. Coupled payments, those attached to production levels, provided a financial incentive to EU producers to overproduce creating price depression on world and domestic markets.

Reforms to the CAP, some resulting directly from policy spillover from the EBA, mostly harm LDC agricultural producers accorded preferential market access under the EBA. CAP reforms have decreased production support and

[52] Milner and Morgan p. 30

[53] Ibid, p. 30

[54] Cantore, Nicola et al, p.17

eliminated many trade distortions caused by CAP policy instruments. However, the unreformed CAP also provided benefits for LDC agricultural exports to the EU by providing artificially high domestic EU prices for many agricultural commodities. The ongoing erosions of support and protection provided by the CAP makes many of the benefits of the EBA dramatically less significant for certain agricultural commodities, and also erodes the preferences accorded to LDC producers by liberalizing access to the EU market.[55] However, the elimination of policy induced low prices due to coupled income support and production subsidies afford LDC's an opportunity to compete based on comparative advantage.[56] Liberalization of the EU's agricultural market presents a bit of a trade-off for the LDC's between "having preferential access to protected markets versus liberalization which provides unlimited access to unprotected markets."[57] While world market prices will rise for some commodities, as EU export subsidies and production supports are reduced, LDC's lose their competitive advantage for many commodities due to the fact that they are no longer enjoy preferential market access to the EU's agricultural market.

CAP reforms have also begun to erode a premium price market for certain agricultural goods. This is especially true for sugar, which had been afforded an especially high level of protection under the CAP. Reform of the Sugar Protocol section of the CAP is an example of policy spillover from the EBA to affecting farm policy, for which DG-AGRI is responsible in the EU. The inclusion of sugar

[55] Jensen and Wusheng, p.295

[56] Milner and Morgan, p. 31

[57] Robinson and Thierfelder, p. 104

in the EBA "created an endogenous spillover to the EU agricultural policy arena."[58] Former EU Agriculture Commissioner Fischler stated before the reforms to the Sugar Protocol that: "Everything But Arms is the best guarantee that the present sugar regime in Europe cannot survive."[59] Chris Milner notes that **"**[w]ith the reform of the EU sugar sector and the lowering of the intervention price the benefits arising from preferential access to the EU will be eroded."[60] Many critics of the EBA also saw sugar, one of the protected 'sensitive' products under the EBA, as a key commodity that could provide the greatest amount of benefit to LDC producers. The general trend of CAP reforms, including the 2005 reforms to the Sugar Protocol, suggests that this will not come to pass, and even if it had, it would have been temporary at best.

As Jensen and Wusheng point out, the CAP has proven to be "both detrimental and beneficial to LDC's."[61] The process of CAP reformation has also proven to be both detrimental and beneficial to LDC agricultural producers, but has been mostly detrimental. While CAP reform reduces trade barriers and market distortions, it also eliminates preferential market access accorded by the EBA and significantly reduces the premium prices paid for certain commodities. Overall, CAP reforms reduce the benefits the EBA provides to LDC agricultural producers.

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[58] Ackrill and Kay, p. 80
[59] Agriculture Commissioner Fischler, as quoted in Faber, G.J., J. Orbie. "Everything But Arms: Much More Than Appears at First Sight" From the Journal of Common Market Studies, Volume 47, Number 4, 2009 p.776
[60] Milner, Chris "EBA-equivalence for non-LDC Sugar Exporters?" From The Commonwealth, issue 44, p.7 from http://www.thecommonwealth.org/files/178670/FileName/tradehottopics44.pdf
[61] Jensen and Wusheng, p. 300

6) Background on the EU's 'Aid Through Trade' Paradigm

The EBA has its philosophical origins in the 1996 WTO Ministerial conference in Singapore, where the EU pledged to increase market access to LDC's. A speech by Sir Leon Brittan, then the Vice-President of the European Commission, stated that "[t]he European Union is ready to make commitments to open further its market to imports from all least developed countries."[62] This places the EBA philosophically in line with the aid through trade policy paradigm, which holds that market access is the key driver in encouraging economic growth in developing economies. This paradigm generally overlooks other factors that affect economic growth in developing countries.

The aid through trade paradigm is a carry-over from the General Agreement on Tariffs and Trade (GATT). The 'aid through trade' paradigm has been criticized as an "inefficient form of aid"[63] because it creates distortions in the incentives to produce in the beneficiary countries. This can often result in low-income countries becoming economically dependent upon a small number of commodities for which they enjoy preferential market access in large developed markets. In these cases, the granting of preferential market access becomes an artificial comparative advantage for the beneficiary nation. Resources then become concentrated in producing the advantaged products. But having preferential market access is often counter-productive over the long term, since it

[62] Statement by Sir Leon Brittan, Vice-President of the European Commission, to the WTO Ministerial Conference, Singapore, December 9, 1996, from WTO website, available at http://www.wto.org/english/thewto_e/minist_e/min96_e/st2.htm accessed June 4 2012
[63] Andrews et al. p.vii

provides a disincentive for economic diversification and for capital investments to increase productivity and efficiency. Although in the short-term, preferential market access may provide a boost to the beneficiary economy, over the long-term it can make a country dependent on a small number of products. In the event of the erosion of the preferential market access, either through the broadening of preferential market access to more competitors, or from its elimination outright, the beneficiary can end up worse off than before. As will be discussed below in greater detail, several of the non-LDC ACP countries have faced this problem due to the EBA, particularly some sugar exporting Caribbean nations and banana exporting African nations. In fact, it is one among several reasons that preferential market access under the EBA was gradual for the three 'sensitive' product areas (sugar, bananas, rice).

7) EU-ACP Trade Relationship- Lomé to Cotonou to EBA

The preferential market access that the EBA grants LDC's have been determined, and constrained to a large extent, by prior trade agreements, specifically those between the EU and the African-Caribbean-Pacific (ACP) group of countries. The EBA is essentially the most recent initiative through which the EU has extended preferential trade access to developing countries. Where the EBA differs from the ACP accords is in the fact that it is the first EU trade policy to specifically target LDC's. This new EU approach to the developing world engendered by the EBA, though, is significant; eligibility for the benefits provided by the EBA is based on the socioeconomic indicators of development rather than on historical colonial relationships that have traditionally underscored the EU-ACP agreements. The paradigmatic shift in EU-Developing World relations the EBA represents suggests "a view that the ACP as a group was no longer the dominant organizing principle for EU-Third world relations,"[64] and is something that has been "divisive among the ACP ranks."[65]

The division between LDC and non-LDC ACP members created by the shift in the EU's focus was exacerbated by the existence of two separate agreements, Cotonou and the EBA.[66] The non-LDC ACP nations, primarily the Caribbean states, became concerned that the market access guaranteed under Cotonou would be eroded by the EBA, resulting in a policy that would in effect end up "taking from the poor and giving to the poorest."[67] Having two preferential trade agreements in place concurrently required the EU "to take into account the constraints imposed" by Cotonou when creating the EBA, which reduced its potential effectiveness.[68] Although to not do so would have been extremely detrimental to non-LDC developing countries, especially those ACP nations who had become highly dependent on high internal EU prices for agricultural commodities, especially sugar.

Perhaps the most significant impact the Cotonou agreement has on the EBA is that it has managed to both extend additional tariff and quota free market access for the ACP and non-ACP LDC's, while also helping to entrench the

[64] Holland, Martin. The European Union and the Third World. Palgrave, New York, 2002. p. 226

[65] MacQueen et al p.146

[66] Holland, p.232

[67] Flint, p.71

[68] Ibid, p.229-231

preferential market access enjoyed by the non-LDC ACP countries, especially as it applies to the ‘sensitive products’ of bananas, rice and, most importantly, sugar. This has had spillover consequences on the ability of the EBA to increase welfare in LDC’s, and has also had an impact on the welfare of non-LDC ACP states. This is an important point, because, as critics have pointed out, the Lomé and Cotonou agreements have “been successful in maintaining ACP exports, but less successful in raising the competitiveness of ACP exports.”[69] The preferential treatment accorded ACP countries, and especially the sugar producing Caribbean states, whether LDC or not, has created a degree of dependence on preferential market access to the EU to the point that “without the preferential treatment accorded by the EU regime, ACP exports could not compete.”[70] In order to assuage the fears of non-LDC ACP nations, as well as to uphold the preferential market access guaranteed under Cotonou “concessions were made on transitional arrangements for significant products: rice, sugar and bananas.”[71] K.Y Amoako, Executive Secretary of the United Nations Economic Commission for Africa, commented at the time that “[u]nfortunately, the EU proposal [EBA] was swiftly attacked by powerful vested interests that succeeded in removing commodities such as sugar, rice and bananas from the liberalization commitments.”[72] Among these vested interests were the non-LDC ACP nations. The EBA concessions on the three sensitive product areas recognized “the

[69] MacQueen et al p. 19

[70] Ibid, p.19

[71] Ibid, p.227

[72] K.Y Amoako as quoted in Mutume, Gumisai “Africa opposes new round of trade talks” From *Africa Recovery*, vol.15 no.3, October 2001, page 7

potential for significant short-term income loss from the erosion of preferences" the non-LDC ACP countries would suffer.[73] This resulted in the EBA being less capable of delivering the benefits hoped for.

8) Background on Lomé and Cotonou

The Lomé Conventions (I, II, III & IV) and their successor, the Cotonou Agreement of 2000, are the foundations of the EU-ACP preferential trade relationship. The Lomé and Cotonou agreements offered preferential market access for ACP member-states in the form of tariff free imports for 9556 of the 10,500 individual HS-8 tariff lines documented in EU trade and tariff regulations.[74]

The first Lomé Convention, signed in 1975, offered non-reciprocal preferential access to the EU market for most ACP exports.[75] The EBA was made official EU policy in February on 2001. The year before, in 2000, the Cotonou Agreement had been signed between the ACP states and the EU on 23 June 2000.[76] Cotonou entrenches preferential trade status to the EU market for the non-LDC ACP states by guaranteeing the continuation of preferential market access. The Cotonou Agreement continues this arrangement until the year 2020,

[73] Andrews et all, p. 61

[74] Jensen and Wusheng, p. 286

[75] From EU website, accessed May 26, 2012. Available at http://ec.europa.eu/europeaid/where/acp/overview/lome-convention/lomeitoiv_en.htm

[76] From EU website, accessed April 21, 2012. Available at http://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index_en.htm

with revisions every five years.[77] While the Cotonou Agreement introduced "important changes and ambitious objectives" it also sought to preserve "the 'acquis' of 25 years of ACP-EC co-operation."[78] In order to do so, the Cotonou agreement takes a different ideological approach than did the Lomé conventions. First, the Cotonou Agreement does away with article 174(2)(b) of the last Lomé Convention, which guaranteed non-discrimination among the ACP states. This allows for differential treatment for ACP countries, effectively dividing the ACP into LDC and non-LDC members.

While the EBA is, in essence, an extension of the quota and tariff free market access already enjoyed by the ACP nations, it only benefits 39 of the 77 ACP nations, as well as the 9 LDC's that are not members of the ACP group of nations. Nearly half of the ACP states, 38 out of 77 to be exact, are not LDC's, including all the Caribbean members, many of the South Pacific members, and Mauritius (the largest sugar exporter to the EU). The distinction along LDC/non-LDC lines created by the EBA has contributed to opposition to the EBA from the non-LDC ACP countries, which, as mentioned above, partially accounts for the existence of the 'sensitive products' exemptions.[79]

The ACP group of countries held special historical significance for the EU member states at the time of the Lomé I Convention. ACP member-states are composed primarily of former French, British, Dutch and Belgian colonies located

[77] From EU website, accessed April 21, 2012. Available at http://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index_en.htm

[78] Ibid, accessed June 16, 2012

[79] Holland, p. 227

in Africa, the Caribbean and the South Pacific. The common element binding the ACP nations is their historical relationships as former colonies of EU member-states. The ACP "is strictly speaking neither a political nor an economic entity. It was established in the framework of relations with the European Union for essentially historical reasons."[80] The former colonial powers had pre-existing, and highly beneficial trade relationships with their former colonies which they sought to have maintained within the then nine-member European Economic Community (EEC).[81] This was achieved primarily by extending the existing bilateral preferential trade agreements each former colonial power had with their former colonies into the EEC trade policy. These trade relationships were then formalized in 1975 in the first Lomé convention.

ACP export trade to the EU has historically been resource based.[82] The bulk of exports from ACP countries to Europe has been, and continues to be composed primarily of raw materials, both agricultural and mineral.[83] Some critics have gone so far as to describe the Lomé and Cotonou trade agreements between the ACP and the EU as a continuation of a "mercantilist trade strategy"[84] due to the fact that exports from ACP countries consist mainly of commodities, including natural resources and agricultural goods, while exports from the EU tend to be value-added goods. Pre-EBA, the EU's method of granting of

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[80] Flint, p.75

[81] From EU website, accessed May 26, 2012. Available at http://ec.europa.eu/europeaid/where/acp/overview/lome-convention/lomeitoiv_en.htm

[82] Holland, p. 227

[83] Jensen and Wusheng, p. 284

[84] MacQueen, p.109

preferential market access had more to do with historical relationships than with economic classification. As mentioned above, the majority of ACP nations have colonial ties to EU member states. The EBA changes the historical relationship paradigm of granting preferential market access to an economic imperative whereby economic realities, rather than historical colonial ties are the determinant for preferential market access. And although most of LDC's do belong to the ACP group, the EBA differentiates between LDC and non-LDC members of the ACP.[85]

Considering the historical context of EU-ACP preferential trade relations, the EBA is not a significant extension of preferential trade access to the EU market, but it does represent a shift in the focus of the EU aid through trade development policy. Although on the surface, the EBA appears to re-orient preferential trade access to the EU market from an historical colonial relations context to one grounded in economics, the effects on actual policy are quite limited. It is important to point out that, of the 48 countries identified by the UN LDC's, only 8 are non-ACP states. 33 of the 48 LDC's are African states, 1 (Haiti) is Caribbean and 6 are Pacific Island states. Furthermore, the Cotonou agreement essentially nullifies the re-orientation of trade policy from colonial to economic. In this sense, the EBA is constrained by Cotonou, which effectively enables the EBA to extend preferential access to eight non-ACP LDC's, while preserving the trade privileges of all the 39 non-LDC ACP nations, meaning LDC's are not significantly advantaged by the EBA, while non-LDC ACP nations

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[85] Flint, p.70

see a slight erosion of their advantages through increased competition from the 8 Asian LDC's.

9) GSP and the EBA

The EBA is a component of the EU's Generalized System of Preferences (GSP), under European Council Regulation 2501/2001. The GSP is the policy framework that sets out the rules and regulations governing preferential trade arrangements the EU unilaterally extends to other countries. The EBA is therefore subject to the same rules that govern the GSP with a few EBA specific conditions. The GSP scheme covers approximately 7000 HS-8 tariff line products, of which 3700 are classified as sensitive, whereas the EBA increases the number of products covered to nearly 10,500, while decreasing the number of sensitive products to 43 (or, more precisely, 68 total tariff product lines, including arms and munitions, which are prohibited under the EBA).[86] The EBA also contains a number of 'safeguard clauses' that are EBA specific, and do not cover other GSP agreements. The EBA safeguard clauses will be discussed in greater detail below.

Because the EBA is bound by the requirements of the GSP, the EBA's potential has been constrained in the amount of benefits it possibly could provide to LDC's. The most important GSP regulations are the Rules of Origin. The GSP's Rules of Origin provide "the framework within which the origin of goods, being not only the source from where they are shipped, but also where they are

[86] Jensen and Wusheng, p.285

deemed to have been produced, is determined."[87] The GSP's Rules of Origin subject LDC exports to strict regulations and requirements, which increases both costs and uncertainty for LDC agricultural producers, reducing both economic benefits and incentive to export to the EU market.

Rules of Origin are a common policy tool employed by developed nations/supra-national entities when granting preferential market access to developing nations. Rules of Origin serve to "ensure that the preference goes only to those whom the GSP is intended to benefit."[88] This reflects concerns among the developed nations that extend preferential market access to developing countries that, without the use of Rules of Origin, "trade privileges that are designed to help developing countries will end up in trade deviation."[89] Essentially, "Rules of Origin are intended to ensure that a differentiation between beneficiary countries and non-beneficiary countries is maintained for the purposes of preferential market access."[90] That is to say, developed nations extending preferential market access are concerned about the potential for abuse by a third party country; where products from a third party country are exported from the preference receiving country to the preference granting country. In such a scenario, the bulk of the economic benefit accrues not to the intended beneficiary country, but to the third party country, which nullifies the purpose of

[87] Naumann, Eckart. "Rules of Origin under the EU-South Africa Trade, Development and Co-operation Agreement and the Cotonou Agreement: The Textile and Clothing Sector", p.102

[88] The European Union's Rules of Origin for the Generalized System of Preferences: A User's Guide, p. 5

[89] Amadée-Dargin, L. "The Impact of Preferential Rules of Origin on the Development of the Textile and Clothing Sectors in SADC Countries" p. 7

[90] Naumann, p.99

the preferential treatment.

The GSP's Rules of Origin, as applied to the EBA, place the administrative and financial burden of authentication upon the LDC's. Compliance with Rules of Origin has a significant effect on production costs.[91] All operations concerning the reporting and certification of goods must be carried out in the beneficiary country in order for originating status to be conferred on any goods.[92] The GSP's Rules of Origin stipulate three conditions that must be met in order to qualify for the preferential market access conditions granted under the EBA. First, the goods must originate in a beneficiary country. Second, goods must be transported directly from the beneficiary country to the EU, and lastly, a valid proof of origin must be submitted.[93] Proof of origin requires that a certificate of origin form 'A' be stamped by the competent authorities in the beneficiary country. Additionally, a "proper system of administrative co-operation" between the beneficiary country and the EU must be in place.[94] In order to authenticate the origin of their products, LDC beneficiary countries must have an "effective visa system and enforcement procedures to prevent unlawful transshipment and the use of counterfeit documents."[95] The GSP further stipulates that "proof of origin cannot be issued unless there is a legal basis to do so at the time of export."[96]

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[91] Amadée-Dargin, p.10

[92] The European Union's Rules of Origin for the Generalized System of Preferences: A User's Guide, p. 5

[93] Ibid, p. 9

[94] Ibid, p.5

[95] Mattoo et al, p. 82

[96] The European Union's Rules of Origin for the Generalized System of Preferences: A User's Guide, p. 9

Furthermore, the EU must be able to request post-exportation checks in order to ensure that all administrative procedures were properly followed.[97]

Many critics argue that reasons used to justify the use of Rules of Origin are in fact poor arguments, ones that masks the true intentions of the Rules of Origin. Rules of Origin often serve to act as “non-tariff barrier to preferential imports from developing countries.”[98] So that even “while the preferential [trade] arrangement may be driven by genuine and legitimate development objectives, the Rules of Origin are very much subject to capture by private interests.”[99]

Rules of Origin are “the most complex and opaque of trade instruments” used by trade negotiators and policy makers.[100] The strictness and complexity of the Rules of Origin covering preferential market access agreements can nullify any potential benefits that such an agreement can deliver to beneficiary countries.[101] This is often done to lend protection to the domestic industry of the country or region offering preferential market access.[102] Generally, the more onerous the requirements outlined in the Rules of Origin, the more difficult it is for the beneficiary country producers to comply. A study done for the British government notes that Rules of Origin “can be written in such a way as to assure that substantial but indirect subventions are provided” to benefit granting nations, giving them just cause to refuse preferential market access to goods from

[97] Ibid, p.6

[98] Naumann, p.99

[99] Grynberg, Ryan, ed. The Impact of Preferential Rules of Origin in the Textile and Clothing Sectors in Africa. London, Commonwealth Secretariat, 2004, p. 5

[100] Grynberg, p.151

[101] Mattoo et al p.90

[102] Naumann, p.103

beneficiary country producers.[103] As a comparison, the Rules of Origin laid out in the Economic Partnership Agreements (EPA's) the EU has been pursuing with ACP countries to eventually replace the Cotonou agreement, are much more simple and flexible than those governing the EBA.[104]

In fact, the EU is frequently accused of using the GSP's Rules of Origin as non-tariff barriers to trade.[105] The stringent Rules of Origin provided under the GSP provides the EU with *de facto* and *de jure* powers to modify both the magnitude and coverage of the market access preferences provided by the EBA.[106] The ability of the EU to do this creates a great deal of uncertainty for the beneficiary countries and the producers they are meant to benefit.[107]
This situation has caused development experts to state that whether "the objective of the EBA can be achieved in the long run is certainly contingent on how [the GSP's Rules of Origin] are applied in reality."[108]

10) EBA's Safeguards – An MS Interpretation

The inclusion of special EBA specific safeguards, in addition to the measures in the GSP can also be attributed to policy spillover. The Cotonou agreement, as previously mentioned, influenced the inclusion of safeguards into the EBA; but

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[103] Grynberg, p. 2

[104] African Press Organization. "EPA negotiations on course, EAC interests safeguarded – Ambassador Sezibera reaffirms EAC Partner States commitment to concluding EPAs" from APO website accessed June 20, 2012. Available at http://appablog.wordpress.com/2012/05/25/epa-negotiations-on-course-eac-interests-safeguarded-amb-sezibera-reaffirms-eac-partner-states-commitment-to-concluding-epas/

[105] Naumann, p. 99

[106] Jensen and Wusheng, p. 295

[107] Ibid, p.295

[108] Ibid, p.289

DG-AGRI also sought these provisions. DG-AGRI was caught by surprise by the speed at which the EBA was introduced,[109] and felt that unrestricted exports from LDC's "would undermine the protected, high-priced EU market regime" for agricultural goods that existed due to the CAP.[110] The safeguard provisions contained within the EBA give the EU the unilateral discretion to suspend or eliminate preferential market access for LDC's. These safeguards are EBA specific, and are in addition to the rules of the GSP. The Temporary Withdrawal measure, as the safeguards are officially called, provides for suspension or elimination of preferences should the import quantities of any product being granted preferential access under the EBA rise above their usual levels or threaten EU producers of the same good.[111] The purpose of the safeguards is to "avoid disruptions to the Community market" and protect the EU's financial interests.[112] The EU assess the impacts of increased imports from LDC's by analyzing a wide array of factors, including reduction in market share of EU producers, reduction in EU production, increase in domestic EU stocks, closure of production capacity, bankruptcies among EU producers, low profitability, low rate of capacity utilization, employment, trade and prices.[113] Martin Holland notes that "[i]t is hard not to suspect the EU of self-serving compromise in relation to

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[109] Ackrill and Kay, p.81
[110] Ibid, p. 86
[111] Cernat et al, p. 6
[112] Bora, Bijit et al. "Duty and Quota-Free Access for LDCs: Further Evidence From CGE Modelling" UNCTAD Policy Issues in International Trade and Commodities Study Series no. 14, p. 21-22
[113] Ibid, p. 21

these [safeguard] provisions.[114].

11) Conclusion

The EBA, when viewed in context of the EU's policy environment, and through the lens of agricultural trade, could never have delivered the benefits many promised of it. Although it is tempting to view the EBA, as many have, as a new approach to aiding the economic development of LDC's, the reality is that the EBA is a minor extension of the status quo. There is nothing significantly novel about the EBA. It fits perfectly into the EU's aid through trade policies that have been in existence for decades, and have addressed the problem of development only through the lens of market access, without addressing the many protectionist and market-distorting policies that contribute to poor LDC economic performance. The EBA only offers modest increases in quota and tariff free access to the EU market for most LDC's (see page 13 and annex 3). These increases are limited to agricultural goods, which LDC's have historically been dependent on in their trade relationships with the EU, and which offer very little in the way of value-added price premiums. The benefits the EBA can deliver to LDC agricultural producers are very much constrained by ACP-EU preferential trade agreements and CAP reforms. With the exception of 8 LDC's (Myanmar excluded), all the LDC's already enjoyed preferential market access to the EU under Lomé and Cotonou. The complexity of the EBA's rules and the strictness of its safeguard provisions, also create great uncertainty for LDC producers. The

[114] Holland, p. 231

GSP's Rules of Origin impose large administrative burdens on the world's poorest nations, and add costs to LDC exporters seeking to exploit their preferential market access. CAP reforms are eroding many market access advantages and price premiums LDC's enjoyed in the EU market. A more accurate assessment of the EBA shows it for what it is: a well-intentioned policy that has been constrained by the broader EU policy environment.

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Annex 1 – Map of ACP Countries

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1.Angola **2.**Antigua & Barbuda **3.**Bahamas **4.**Barbados **5.**Belize **6.**Bénin **7.**Botswana **8.**Burkina Faso **9.**Burundi **10.**Cameroon **11.**Cape Verde **12.**Central African Republic **13.**Chad **14.**Comoros **15.**Democratic Republic of Congo (Kinshasa) **16.**Congo (Brazzaville) **17.**Cook Islands **18.**Cote d'Ivoire **19.**Cuba **20.**Djibouti **21.**Dominica **22.**Dominican Republic **23.**East Timor **24.**Equatorial Guinea **25.**Eritrea **26.**Ethiopia **27.**Fiji **28.**Gabon **29.**Gambia **30.**Ghana **31.**Grenada **32.**Guinea **33.**Guinea-Bissau **34.**Guyana **35.**Haiti **36.**Jamaica **37.**Kenya **38.**Kiribati **39.**Lesotho **40.**Liberia **41.**Madagascar **42.**Malawi **43.**Mali **44.**Marshall Islands **45.**Mauritania **46.**Mauritius **47.**Federated States of Micronesia **48.**Mozambiqu **49.**Namibia 50.Nauru **51.**Niger **52.**Nigeria **53.**Niue **54.**Palau **55.**Papua New Guinea **56.**Rwanda **57.**St. Kitts and Nevis **58.**St. Lucia **59**.St. Vincent and the Grenadines **60.**Samoa **61.**Sao Tome and Principe **62.** Senegal **63.**Seychelles **64.**Sierra Leone **65.**Solomon Islands **66.**Somalia **67.**South Africa **68.**Sudan **69.**Suriname **70.**Swaziland **71.**Tanzania **72.**Togo **73.**Tonga **74.**Trinidad and Tobago **75.**Tuvalu **76.**Uganda **77.**Vanuatu **78.**Zambia **79.**Zimbabwe

Annex 2 – Map of LDC Countries

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are needed to see this picture.

1. Afghanistan 2. Angola 3. Bangladesh 4. Benin 5. Bhutan 6. Burkina Faso 7. Burundi 8. Cambodia 9. Central African Rep. 10. Chad 11. Comoros 12. Dem. Rep. of the Congo 13. Djibouti 14. Equatorial Guinea 15. Eritrea 16. Ethiopia 17. Gambia 18. Guinea 19. Guinea-Bissau 20. Haiti 21. Kiribati 22. Lao People's Dem. Rep. 23. Lesotho 24. Liberia 25. Madagascar 26. Malawi 27. Mali 28. Mauritania 29. Mozambique 30. Myanmar 31. Nepal 32. Niger 33. Rwanda 34. Samoa 35. Sao Tome and Principe 36. Senegal 37. Sierra Leone 38. Solomon Islands 39. Somalia 40. Sudan 41. Timor-Leste 42. Togo 43. Tuvalu 44. Uganda 45. United Rep. of Tanzania 46. Vanua 47. Yemen 48. Zambia

Annex 3 – Impact of EBA 2000-2001

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are needed to see this picture.

Source: World Bank; “Integrating the Least Developed Countries into the World Trading System: The Current Impact of EU Preferences under Everything but Arms,” 2003