

Development Research Briefings



2004, No. 3

SPECIAL AND DIFFERENTIAL TREATMENT OR DIVIDE AND RULE? EUROPEAN UNION TRADE POLICY TOWARDS DEVELOPING COUNTRIES

Sheila Page ⁱ

Overseas Development Institute (ODI), London

CAN THE EUROPEAN UNION (EU) ACHIEVE A STABLE TRADING RELATIONSHIP WITH DEVELOPING COUNTRIES?

There are two key facts about EU trade policy towards developing countries. Firstly trade (and more broadly foreign) policy toward developing countries is not of central importance to any of the EU members (which is why they are willing to delegate it to the European Commission). Secondly, (and a corollary), the allocation of different privileges and special relationships can be better explained by looking at important interests (including European agriculture and relations with the USA) than by looking at development needs. Currently, Europe faces two major challenges in its trading relationships with developing countries: to rebuild trust after the North-South acrimony at the Cancún WTO Ministerial, and to find a consistent path through its overlapping and conflicting levels of special treatment for developing countries. How the EU meets the challenge of addressing the sometimes competing, and often complex, agendas attached to these relationships will be a key element in its efforts to achieve a coherent approach to its external relations.

How has EU trade and foreign policy towards developing countries evolved over time? Has this evolution occurred by accident or as a result of the interaction of other priorities or in accordance with a development agenda? In practice, the foreign policy of EU member states towards developed countries is determined primarily at national level (in spite of various legal changes). However, trade policy for developing countries appears to have followed a different and more collective track. This gives rise to the question as to how far this indicates a more altruistic approach and how far it suggests a lack of interest? Addressing these questions forms the basis of this briefing paper.

TRADE GOALS AND FOREIGN POLICY GOALS

No clear line can be drawn between 'trade policy' and 'foreign policy'. The basic objective of the EU's two principal trade agreements, its own customs union and the General Agreement on Tariffs and Trade (GATT)/World Trade Organization (WTO), was political rather than economic: namely, to try to ensure future peace among members by increasing their economic integration. Instruments of trade and foreign policy overlap, for example, in the use of trade concessions to 'friends' as opposed to only providing these for countries which are poor or economically useful, and more directly, through the use of trade sanctions for political aims.

Countries' goals include security (in the military sense), power or influence in the world, and enhancing the economic welfare of their inhabitants. They pursue these goals through both domestic and foreign policy instruments. But such goals can also, in principle, include more altruistic aims, often pursued through aid policies, and therefore more concentrated on relations with developing countries. These goals include promoting the economic well-being or security of others, and protecting human or civil rights. For the EU, at least until its Constitution is adopted, there are also other more limited goals: 'to manage more effectively our relationships with our nearest partners' (apparently meaning Eastern Europe and possibly North Africa), and to bring our experience of multilateral co-operation to a wider stage' (Patten 2000). This is a very restricted view of foreign policy, compared to how one might define the foreign policy of the USA or Japan. This suggests that a large range of what individual EU member states are likely to consider the more important elements of foreign policy are still left to member countries' own devices. Common European policies only apply to those countries of secondary importance.

The aid environment is another influence on the EU's relations with developing countries. The EU has had elements of a common development policy since the 1970s (or even since 1958 with the establishment of the European Development Fund). Aid policy can require much closer involvement between donor and recipient than 'normal' foreign policy relations conducted between equals, and the choice of recipient and the allocation of resources among recipients are both political decisions. This has led to a very different form of foreign policy towards developing countries.

The Evolution of the EU's Trade Policies

Legally, trade relations with all countries are unquestionably an EU policy area. However, actual trade barriers towards other developed countries are now very low, except in the case of agriculture. Thus the EU has concentrated its detailed, differentiated trade policy on developing countries. In the post World War II period up until the recession of the early 1970s, European trade policy had generally been on a liberalisation path. Therefore, changes in trade policy mostly took the form of EU wide tariff reductions. Special measures for developing countries were mainly tariff based and operated at EU level. A few special quota arrangements were exceptions to this trend (e.g. sugar). Even these were operated on an EU wide basis (except during brief periods of transition for new EU members). None of these gave rise to any need for special policy negotiations with trading partners. In contrast, the increase in protection during the 1970s and early 1980s was largely implemented through non-raditional trade measures. Quotas were defined at national level. 'Voluntary' export agreements were made between national industries. All these measures taken against individual countries gave rise to the need for EU wide negotiations and thus EU wide policy decisions.

Until the creation of the Single European Market (SEM) in 1992, the EU was not a complete customs union or even a free trade area. Member states' relations with other countries could differ. Different trading relationships existed for a mixture of motives: for instance, differing economic conditions or policies which (countries believed) required differing levels of protection (such the country-by-country quotas under the Multi-Fibre Arrangement or the treatment of Japanese car exports). Differentiated trading relationships also arose due to different historical or traditional links, most notably the West German concessions for East Germany and the

different trade regimes for banana producing countries. The ostensible philosophy behind the SEM initiative was that opening the internal market was the paramount goal, and therefore anything which made this impossible, (whether differing standards within countries or different relations with external trading partners), had to be removed. In theory, purely economic restrictions could be taken over and harmonised at EU level, with the usual bargaining about benefits and costs arising from any change in EU policy (and no account taken of the impact on external trading partners). However, even these changes posed two new problems for the EU as a whole: firstly, having to take an explicit EU policy stance toward individual foreign countries and, secondly, having to negotiate with them. Those measures, which existed explicitly for political as distinct from trade reasons, clearly required new policy responses. Whether they were harmonised 'up' or 'down' required a collective decision on just how important to the EU as a whole were (i) the relations with the particular country and (ii) the viewpoint of the member country which wanted the special regime. The fall of the East German regime removed one potential problem. The special bananas regime, however, brought about disputes both within the EU and between the Union and other countries.

WHAT CAN CURRENT EU TRADE POLICY TOWARDS DEVELOPING COUNTRIES REVEAL ABOUT THE EU'S STRATEGY?

Four types of trade relationship with developing countries must be examined. As the WTO has become an increasingly important forum for developing countries and as it is the only major international organisation of which the EU is a member, the EU's relations with developing countries at the WTO are of central importance. Outside this, the EU has had special relations with some African countries since the 1960s, and with the current African, Caribbean and Pacific (ACP) group of countries since the 1970s. It has offered the Generalised System of Preferences (GSP) to all developing countries, and in 2000 it greatly increased the privileges it offered to Least Developed Countries under this mechanism. Finally, over the past decade it has completed three Free Trade Agreement (FTA) with South Africa, Mexico and Chile. It is currently engaged in negotiations with MERCOSUR for what would be its first major agreement with another regional groupⁱⁱ.

The EU in the WTO

The role played by developing countries within the WTO has expanded since the late 1990s as an increasing number of developing countries identified important interests. Moreover, as membership of the WTO has grown so too has the share of developing countries in its total membership. The failure of the third WTO Ministerial Conference held in Seattle in 1999 was partly due to conflicts among developed countries (in particular, between the US and EU on agriculture). However, it was also seen as a demonstration of developing countries' unwillingness to be left out of the decision making process. The EU and US were both considered 'guilty' on this count.

In the two years before the fourth WTO Ministerial Conference held in Doha in 2001, the EU attempted to rebuild its relationship with two groups of developing countries: firstly, the Least Developed Countries, by making its offer of 'Everything but Arms' (EBA) access; and the African, Caribbean, and Pacific (ACP) former colonies by presenting itself as the defender of their continuing access, on favourable terms, into the EU market. It emphasised this alliance at Doha by working with the ACP group to bring a waiver of WTO rules, which allowed such access before the Ministerial meeting (not a normal WTO procedure). In return, it had sufficient support from these two groups, without antagonising the other developing countries, to achieve agreement on the two ambiguous forms of words which allowed Doha to be a success: that negotiations would aim at 'reductions of, with a view to phasing out, all forms of export subsidies' on agricultural products and that negotiations on the 'Singapore Issues' would only take place after the next conference '...on the basis of a decision, to be taken by explicit consensus' (Doha Declaration, 2001).

These alliances collapsed at the fifth WTO Ministerial held in Cancún in 2003. Moreover, a new group emerged which was opposed to the EU's position on agriculture. WTO negotiations had passed the point where ambiguities were possible and the EU was not willing to give up its own interests on agriculture in order to reach an agreement that would benefit developing countries. While the ACP and Least Developed Countries would have accepted the EU's position on agriculture, because protection for the EU would have preserved their own preferences, they would not accept inclusion of all of the Singapore issues. While some of the more advanced

developing countries (which had grouped under Brazil, China, South Africa and India into the G20) might have compromised on the Singapore issues, they would not accept the EU's position on agriculture. The EU therefore found itself with no allies. The US was also without allies, but was less concerned about finding them. The EU had succeeded in protecting its priority position, agriculture, but at the cost of making it evident that this interest was more important to it than helping developing countries to achieve a 'Development Round': a serious setback in its multilateral trade strategy.

EU-ACP Trade Relations

The choice of countries, namely the ACP group, eligible for special privileges under what were the Yaoundé and Lomé Conventions and what is now known as the Cotonou Convention, is sometimes attributed to altruism and concern for poor countries. Yet, in reality, it was partly based on existing interests: its relations with its former colonies, and partly based on economics. The Francophone countries, which France considered to be of particular importance, all received special trade concessions under these conventions. Some of those countries which the UK wanted to favour were brought into this arrangement, but only those sufficiently small enough so as not to be considered a competitive danger. Those believed to be potentially the most competitive were excluded, even if they were clearly poor, notably India and Pakistan. The chosen countries received unilateral preferences combined with aid.

In 1996, when the EU proposed to end this system, and to change to free trade agreements (FTAs), and to a regional instead of an ACP basis, it could be argued that these proposed changes were for purely legal reasons, namely, to comply with WTO rules on regions and preferences (the official EU reason). But it could alternatively be seen as a reaction to the EU's new trade relations with Eastern Europe. If this had to become a new 'most favoured' trading partner then others, particularly those like the ACP group which had almost unlimited access, had to have their access reduced. Thus the 'regional' rationale was more cosmetic than real. Taking a cynical interpretation, the choice taken to favour Eastern Europe was clearly a political one. The consequences for 'rest of the world' were seen as too low a priority to require separate individual special treatment. This shift also served other EU interests, in securing markets in the now-growing African countries (and in excluding the US from these).

Negotiations for these free trade agreements began in 2002. The EU decided that the appropriate division would be by regional group rather than by common characteristics. Thus it divided the Africa Group into four to five regions. The African countries have made some effort to reduce these divisions but the position is complicated by the fact that the EU has already negotiated agreements with two countries which are members of African regions (Egypt in the Common Market of Eastern and Southern Africa {COMESA} and South Africa in the Southern Africa Development Community {SADC}). The east and southern African region is therefore deprived of its two most experienced negotiating members, and any resulting agreements will be difficult to administer.

The EU Generalised System of Preferences and 'Everything But Arms'

Since 1971 the EU has offered preferences to all developing countries under the GATT-compatible Generalised System of Preferences (GSP), which was designed to allow developed countries to give better treatment to developing than to developed trading partners. This was to be applied to developing countries on a non-discriminatory basis. The GSP allowed better preferences for Least Developed Countries though this provision was not significantly utilised until the late 1990s. Then, in 2000, before the commencement of negotiations with the ACP on Economic Partnership Agreements (EPAs) and only four months after the signing of the Cotonou Convention, the EU offered non-reciprocal complete freedom of entry to Least Developed Countries (which make up about half the ACP group). This offer became known as the 'Everything But Arms' initiative. Coming on top of the regional divisions, this initiative further divided the ACP group. It also divided the non-ACP group of developing countries. The inclusion of the most sensitive agricultural goods, which had been excluded even from Lomé, meant that this was a major step up in preferences. Although the Cotonou agreement contained provisions for the ACP countries to be consulted prior to any changes in the agreement, there were no such consultations. This suggests that the EU was not only not giving priority to ACP interests; it was not even noticing them.

The fact that India, Indonesia and Pakistan, (equally poor though not Least Developed Countries under the United Nations definition used by the EU), were potentially the main losers, also suggests that the initiative for the Least Developed Countries reflected

EU interests rather than a shift to altruism. Pakistan was later compensated, because of its political importance after the start of the Afghanistan War and Indonesia also received special assistance as an oil producing state. However, India remained excluded.

Two changes have put the EU's preferences strategy at risk. As long as extra preferences for the Least Developed Countries remained small, and even the access for the ACP under Lomé had important limits, preferences did not have any major influence on the multilateral trade system. While calculations after the Uruguay Round found that a few countries lost from multilateral liberalisation, and this led to the coining of a new term, 'preference erosion', these effects had not been a negotiating issue. This was partly because they had not been recognised during the negotiations, partly because the largest effects on textile producers were distant because of the delays in implementation, and partly because the countries affected were not active in the WTO (preference-dependent countries had assumed they had no reason to participate). By 2003, preference erosion was a negotiating issue because bigger preferences meant bigger effects, and because the lessons of preference loss under the Uruguay Round meant that there are now almost no countries that do not participate actively in the WTO. There was, therefore, an important and increasingly bitter division between those who had preferences, and thus had little interest in multilateral liberalisation and, in a few cases, strong interests in opposing liberalisation, and those who did not have significant preferences (especially on agriculture, where GSP offers little) and who thus strongly favoured liberalisation. While other countries had also increased their preferences for Least Developed Countries, the EU had the principal responsibility for this.

The second change is the new scope for challenging discrimination under the WTO. Under GATT, the disputes procedure had no 'teeth'. In 2003/2004, however, India challenged the special provisions the EU had long offered to some Latin American countries, which the EU had justified as an instrument in combating the production of illegal drugs. The EU extended these special provisions to Pakistan (after 9/11) and India challenged the legality of the discrimination between itself and Pakistan. The WTO ruled that any discrimination had to have a transparent basis for distinguishing beneficiaries and that the EU had not defined one (WTO 2004). While this ruling leaves open the possibility of discrimination, if there are clear criteria, it restricts the use of purely discretionary criteria.

The EU's Free Trade Agreements

The EU-South Africa Agreement

The agreement between the Union and South Africa was the first permanently 'asymmetric' agreement between a developed and a developing country. But by signing an agreement with South Africa, the EU created a complicated relationship with the four ACP countries in a customs union with South Africa and a potential difficulty when SADC came to negotiate an EPA under Cotonou.

EU FTAs with Latin American countries

Until recently, in contrast to the policy within Europe and with the ACP, trade was not seen as the most important instrument of policy towards Latin America. This could be partially explained by the nature of the EU's imports from Latin America: these were either much too sensitive to negotiate (for instance agricultural products, including bananas) or were already, for the most part, duty free (for instance, tropical agriculture, almost all manufactures). It was also partly due to Latin America's less export-based policies. The lack of interest in trade relations with Latin America resulted in significant increases in the barriers faced by Latin American producers in exporting to Spain after Spain joined the EU.

In the 1990s, however, there was a surge of interest in trade agreements with Latin America. The timing of the negotiations with Mexico, MERCOSUR, and Chile (immediately following the North American Free Trade Agreement {NAFTA} and the proposal for a Free Trade Area of the Americas {FTAA}), like the corresponding proposal by the US for an agreement with Africa following the EU's proposal for regional trade agreements with the African regions, may reflect a sudden, simultaneous, identification of trading interests. More realistically, it can be considered a traditional effort to preserve and enhance the position of one power in response to a move by another. Following the signing of the NAFTA agreement between the US, Mexico, and Canada, the EU had a clear interest in preserving its market and the rights of its investors in Mexico, while Mexico also had an interest in preserving diversification in its trade. The resulting agreement gave the EU the same position as the US, while Mexico regained access to EU markets for its manufactures.

The EU-Chile agreement began as a parallel negotiation to the EU-MERCOSUR negotiation process: the latter had been presented as an agreement between customs unions. Chile

subsequently signed an FTA with MERCOSUR. But the increasingly active negotiation of a Chile agreement with the US gave the EU the same motive that it had with Mexico, of avoiding losing market share to the US. By 2001, it was clear that the EU-MERCOSUR negotiation process was stalled. While there are some sensitive agricultural products in Chile-EU trade, they are not as fundamental to it, so the EU could sign an agreement with Chile. This decision to sign a Chile-EU agreement was a diplomatic blow to MERCOSUR, and implicitly to regionalism among developing countries, but fitted into the trade strategies of both Chile and the EU.

An EU agreement with MERCOSUR had been intended to be the first major example of a regional foreign and trade policy: a free trade area between two major customs unions. However, the only precedent was not encouraging. The EU's agreement with a third customs union, the South African Customs Union (SACU), had happened without negotiation and without even consultation with the four smaller members of SACU. It came about, simply as an automatic consequence of the EU-South Africa Agreement. Moreover, the desire by the EU to demonstrate the strengths of regionalism has so far proved weaker than the pursuit of the economic interests of European agriculture. The main gains for MERCOSUR from an EU-MERCOSUR agreement would be in agriculture, but any access for them would require major reform of the Union's Common Agricultural Policy (CAP). The EU-MERCOSUR negotiations have moved closely in parallel with the FTAA, supporting the view that the EU's (and MERCOSUR's) interests are more in preserving a balance of trade and power than in inter-regional cooperation.

Is there a Coherent Trend in EU Policy?

There has been a gradual reduction in the ACP's relative privileges, culminating in the proposed shift to reciprocal free trade, combined with new access for the Least Developed Countries and FTAs for other developing countries. These moves could be interpreted as a move away from discretionary choices about which countries to favour and towards a more development-based hierarchy (comprising more preferences for the Least Developed Countries and similar agreements for the rest). But they also suggest a reduction in the extent to which former colonies are favoured for foreign policy reasons. The proposal by the EU to offer free access under 'Everything But Arms' to the Least Developed Countries could lend support to the former

interpretation, but the timing of this, when the EU needed support from the Least Developed Countries in WTO negotiations, may suggest a motive more tied to the EU's own policy interests. The FTAs all support this EU-policy view. The failure at Cancún came when the EU clearly chose to protect its own interests. The result is that there is no well-organised hierarchy of EU trade relations with developing countries. Instead there is a 'labyrinth of overlapping and divisive policies' (Gillson and Grimm 2004 - see chart 1). Thus it is surprising that the European Commission thinks it is in a position to criticise African countries for having multiple trading agreements.

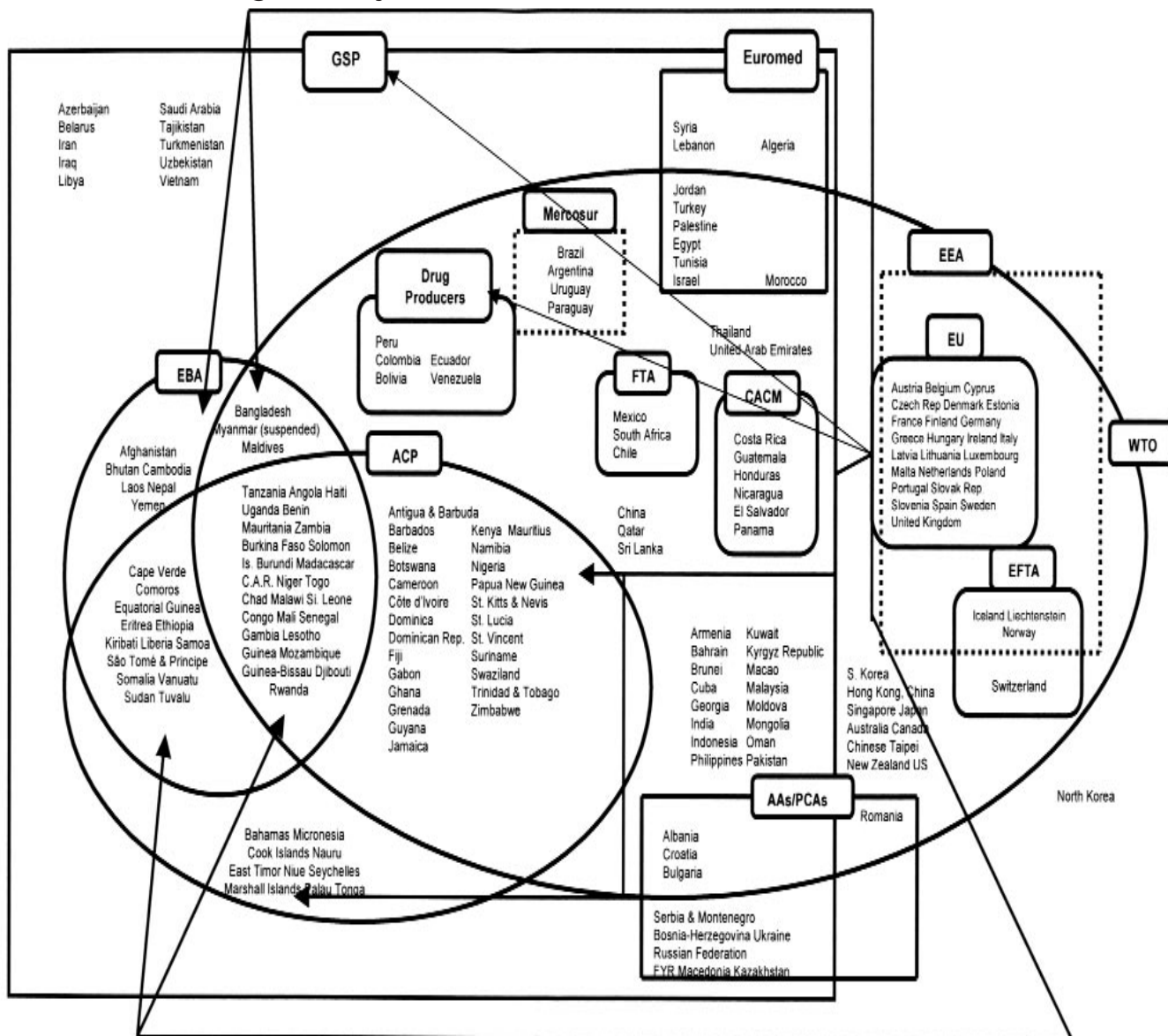
FUTURE EU POLICY TOWARDS DEVELOPING COUNTRIES

The application of EU collective responsibility has been effectively limited to the world excluding the US and Japan, that is to countries where members' national interests are not crucial. Policies towards

developing countries have had to sacrifice development priorities to trade and other European policy objectives.

Some policies, such as the shift towards EPAs for the ACP group and the negotiations with MERCOSUR, suggest a more regional or in some cases country - by - country approach (for instance, the agreements with Mexico, Chile and South Africa). The agreements with the ACP countries show a continuing concern for some poor countries. But this is only for those that do not present a trading 'threat'. Others go in the direction of a more 'realist' interpretation of EU foreign policy. The reorganisation of the Commission along functional rather than regional lines placed trade with the ACP alongside other trade relations rather than with development. The granting, in 2000, of special access for the Least Developed Countries cut across most of the regions with which the EU was negotiating and united the non-Least Developed Countries in their opposition to the resulting trade

Chart 1: EU Trade Regime, May 2004



diversion. It also united the Least Developed Countries (LDCs) in their opposition to trade liberalisation. But it secured LDC support, although only temporarily.

It is clear that none of the three FTAs has been directed at the poorest countries. Nor do they contribute to unity among developing countries (dividing Mexico from the rest of Latin America, Chile from MERCOSUR, and South Africa from the other countries in SADC). And two are primarily instruments of the EU's foreign policy towards the US, rather than being of themselves of direct interest to the EU.

A Machiavellian view of the EBA might even suggest that it was designed to immobilise the WTO by creating a new bloc to oppose the growing power of the major developing countries and to prevent any threat to the EU's protection of its agriculture. Alongside this, the mix of FTAs with large countries and EPAs with the ACP countries could have been designed to prevent any region from becoming a powerful negotiating opponent. But neither the clear disappointment of the EU with the outcome of the Cancún Ministerial nor the labyrinth of relations set out in Chart 1 seems consistent with such an orderly and well-planned strategy.

The EU needs to place a higher priority on achieving a coherent relationship with developing countries and, of course, towards achieving coherence across its development policy and its trade policy. It is inevitable, rather than wrong per se, that it will take account of foreign policy and domestic policy interests in its relations with developing countries, as well as in its relations with the US and Japan. But

developing countries are no longer willing to be treated purely as objects of EU policy, and they are acquiring the power and skill to obstruct EU objectives. It will be difficult for the EU to revise its multiple commitments, but it, like the ACP countries which it is supporting, must review all of its trading arrangements and decide on how to make them coherent. As many of the issues in its trade with developing countries also apply in its trade with developed countries, the Union cannot simply liberalise its trading relations with developing countries without considering the consequences for its general trade policy. It could go in the opposite direction, of phasing out the use of trade policy for development purposes, and using aid for these. However, its overall policy would still be 'incoherent' if it helps countries to develop their exports but subsequently refuses them access to its markets. Ultimately, the basic incoherence in the Union's trade policy is between its stated commitment to open trade and its insistence on a special position for agriculture.

The author would like to thank Sven Grimm and Alan Matthews for comments on an earlier version of this paper.

Bibliography

Gillson, Ian and Grimm, Sven (2004), *EU Trade Partnerships with Developing Countries*, ODI EDC Briefing Paper, March.

Patten, Chris (2000), 'Towards a Common European Foreign Policy: How are we doing?', Winston Churchill Memorial Lecture, Luxembourg, 10 October.

WTO (2001) *Ministerial Declaration*, Ministerial Conference Fourth Session, Doha, November, No WT/MIN(01)/DEC/1, 20 November.

WTO (2004) *Report of the Appellate Body*, The European Communities' Conditions for Granting of Tariff Preferences to Developing Countries - AB-2004-1.

Endnotes

ⁱ This paper is based on a presentation at a one day conference held on 14th April 2004 on the theme 'European Union Development Co-operation to 2010 and Beyond: Challenges for Ireland in an Enlarged Union'. This conference was organised by the Centre for Development Studies in association with ODI, the European Association of Development Research and Training Institutes (EADI) and the European Centre for Development Policy Management (ECDPM).

ⁱⁱ The EU has had trading arrangements with the North African countries for some years. These have gradually evolved into partial FTAs, but it is difficult to identify a finite negotiation process for these arrangements. The importance of 'security' and 'neighbourhood' effects make these different from those trading arrangements with other areas.

CDS Research Briefings 2004 No. 3

Published by the Centre for Development Studies, University College Dublin, Belfield, Dublin 4.
Tel: +353-716 7595 Fax: +353-1-716 1121 E-mail: maura.leen@ucd.ie

The content of Research Briefings may be quoted or reproduced without further permission.
Due acknowledgement is requested.

The Publication of CDS Briefings is facilitated by financial assistance provided by Development Cooperation Ireland.

