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The EU-Caribbean Trade Relationship Post-Lisbon: The Case of Bananas

Vanessa Constant LaForce

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Abstract

This article examines, from a legal perspective, the Lisbon Treaty changes over the European Union's (EU) common agricultural policy (CAP) and their impact on developing countries. The study focuses particularly on the Caribbean region of the African, Caribbean and Pacific (ACP group), which signed an Economic Partnership Agreement with the EU in 2008, and will use bananas as the exemplar commodity. The Lisbon Treaty which entered into force in December 2009 has brought important institutional changes within the EU and altered the distribution of responsibility over European policies. The European Parliament (EP) now exercises legislative functions 'jointly' with the Council over fields falling outside EU trade policy but which often have trade-related impacts. This is the case of the CAP which is now a shared rather than an exclusive competence policy area. The EU is an important market for developing countries' export of agricultural food products. However, there is a risk that the EP positions, pressured by consumer opinion, could influence the negotiating process leading to the reinforcement of the EU's protectionist agriculture policy. This subject is of high importance given the end of the so-called 'banana war' in 2009 against the EU banana import regime, allowing better access for Latin American countries' bananas to the EU market. This article argues that ACP countries will not be affected by the EU internal changes post-Lisbon. They have managed to legally maintain special trade arrangements with the EU under the Economic Partnership Agreements, which provide them with favourable trading conditions, particularly for agricultural food products.

Keywords

Lisbon Treaty; Common Agricultural Policy; Caribbean countries; Economic Partnership Agreement; Agricultural trade; Bananas

The European Union (EU) is the largest trading partner for developing countries and the main destination for their agri-food products.¹ Agriculture is also a key policy area within the EU. Both agriculture and trade in agricultural products were included in the common market in 1957, leading to the establishment of the Common Agricultural Policy (CAP) in 1962.² Agriculture has always been a politically sensitive sector for the EU and consequently has received a high level of protection.³ The EU has employed a variety of trade-distorting practices to protect its own agricultural market which have affected the opportunities for developing countries in agricultural trade.⁴ The EU has thus been classified as one of the top 'users' of domestic farm support policies⁵ which are a 'source of market and trade distortions'.⁶ The EU agricultural protection measures have helped the EU to protect its own agricultural sector, resulting in what many writers have termed 'Fortress Europe'.⁷ These measures have been detrimental to the global trading system and had a severe impact on the world's poorest countries. They are also opposed to the objective of free trade within the WTO. The CAP has, however, become a more market-orientated policy through successive reforms.

In addition, the EU provides better market access to selected beneficiary countries through preferential trade arrangements under which tariff barriers on trade must be reduced or eliminated within the group. This is the case for those Caribbean countries, examined in this article, with which the EU has particularly strong historic ties. Even today, the relationship between the EU member states (MS) and the region is close, mainly via the French Overseas Departments, and the Overseas Countries and Territories of the United Kingdom (UK) and the Netherlands. The EU maintains special

economic and post-colonial relations with Caribbean countries and increases their trade opportunities to the protected EU agricultural market under the Cotonou Agreement. This agreement was signed in Benin on 23 June 2000, with subsequent revisions made to the original text in 2005 and 2010.⁸ It is the result of colonial trade preferences between EU MS and their former colonies, referred to as the African, Caribbean and Pacific (ACP) Group of States.

The Cotonou Agreement has removed the system of non-reciprocal trading preferences provided under the Lomé Conventions which replaced the Yaoundé Conventions I and II. The latter provided for reciprocity in preferences between African countries and the EU. Lomé I was signed following the accession of the UK to the EU in 1973 and in order to include the Commonwealth states.⁹ Before joining the EU, the UK granted Commonwealth trade preferences to its former colonies which were on a non-reciprocal basis.¹⁰ The Cotonou Agreement offers better market access for these countries to the protected EU agricultural market for sensitive products such as bananas, which is examined in this article as the exemplar commodity. From 1993, there was a long-standing dispute in the GATT/WTO over the EU common banana import regime. The conflict finally ended in 2009. For the purpose of this study, 'bananas' refers only to fresh bananas, excluding plantains, classified under the combined nomenclature (CN) code 08030019. Trade in bananas forms the largest share of the international fruit trade market.¹¹

In 2009, the Lisbon Treaty entered into force and brought important changes to the EU agricultural policy. The CAP is given a legal base in Article 38 Treaty on the Functioning of the European Union (TFEU), which for the first time also explicitly refers to the common EU fisheries policy. The Lisbon Treaty did not alter the general objectives of the CAP, which are essentially economic, political and market related. These include increasing agricultural productivity, ensuring a fair standard of living for farmers, stabilising markets, assuring the availability of supplies and guaranteeing reasonable prices to consumers.¹² The scope of the CAP must, as a general principle, also consider consumer protection rules and ensure a high level of protection.¹³ In addition to this, it must integrate environmental protection rules and ensure a high level of protection.¹⁴ The main changes brought to the EU agricultural policy are twofold. The responsibility for decision-making in this area, which has always been exclusively granted to the EU, is now shared between both the EU and the MS.¹⁵ MS are therefore allowed to create their own agricultural laws, applying for the first time the concept of subsidiarity, pursuant to Article 5 TEU post-Lisbon. Moreover, the Lisbon Treaty has also extended the ordinary legislative procedure to agriculture in Article 43 of the TFEU, thereby making, for the first time, the EP a co-legislator with the Council of the EU in the agricultural area.

These internal changes are likely to have a consequential impact on developing countries' export of agricultural food products to the EU, potentially allowing the EP and MS, pressured by consumers and farmers' opinions to reinforce the EU's protectionist agriculture policy. Given this, this article examines from a legal perspective, the main Lisbon Treaty changes over the CAP. In particular, the analysis will focus on the possible impact on developing countries, specifically those in the Caribbean region. This is an issue of which the Caribbean region and the EU need to be particularly aware as they recently signed a free trade agreement (FTA), the EU-CARIFORUM Economic Partnership Agreement, pursuant to the Cotonou Agreement.¹⁶ Under this agreement, Caribbean countries are, for the first time, required to liberalise their tariffs with respect to all goods imported from the EU.

THE EU BANANA IMPORT REGIME

The EU is not a big producer of bananas. The most important EU banana-producing regions are the Canary Islands, the French overseas departments of Guadeloupe and Martinique, the Azores and Madeira, which account for 16 per cent of the EU's total supply.¹⁷ Cyprus, Greece and Portugal also produce bananas but in very small quantities.¹⁸ The rest of the EU's supply is mainly imported from

the ACP countries and the Latin American countries. The EU is the biggest importer of bananas, followed by the United States. In 2010, the EU imported a total of 4,491,116 tonnes of bananas.¹⁹

ACP countries, as former EU colonies, are traditional banana suppliers to the EU. Bananas, along with sugar and rice, are traditional agricultural products of many ACP countries and play a major role in the economy, living standards and conditions of the population. ACP banana-exporting suppliers were granted preferential access to the EU market under the then Lomé Convention at the expense of Latin American banana producers which were only benefiting from the Most Favoured Nation (MFN) tariffs. The entry into force of the Common Market Organisation (CMO) for bananas in 1993 has maintained the privileged position of 12 traditional ACP banana-supplier countries within the EU market. These countries, mainly from the Caribbean region, were receiving duty-free access for fixed quantities of bananas under a tariff quota scheme.²⁰

On the other hand, imports of bananas from third countries and non-traditional ACP suppliers were subject to a tariff quota of two million tonnes per year.²¹ This quota was to be adjusted in accordance with the 'forecast supply balance on production and consumption in the [Union] and of imports and exports'.²² Non-traditional ACP banana-suppliers were receiving duty-free access to the EU market within the established quota limit. Bananas imported above the agreed quantity were subject to a levy of ECU 750 per tonne.²³ Bananas imported from third-countries within the agreed quota limit were subject to a levy of ECU 100 per tonne and of ECU 850 per tonne above the quota.²⁴

Given this division between former colonies and other developing countries, trade in bananas swiftly became a thorny issue. The EU's banana import regime led to a protracted dispute between the EU on one side, and Latin America countries and the USA on the other. This conflict became known as 'the banana war'. Since 1993, the EU's CMO for bananas has been found to be incompatible with GATT and WTO rules several times.²⁵ On April 2001, the EU reached an understanding on bananas with the USA and Ecuador under which the EU undertook to introduce a tariff-only system for imports of bananas before 1 January 2006.²⁶ However, issues remained with regard to the MFN tariff level for bananas.

The dispute over banana trade finally ended on 15th December 2009 with the conclusion of an agreement between the EU and the Latin America banana suppliers on the future EU trade regime for bananas.²⁷ Under this agreement, the EU has agreed to reduce its existing MFN tariff rate progressively on bananas of EUR 176 per tonne²⁸ to EUR 114 per tonne from January 2011 to January 2017.²⁹ The conflict between the EU and the USA was also settled with an agreement under which the EU reaffirmed its tariff reduction obligations and its commitment to maintain a MFN tariff-only regime for the importation of bananas.³⁰ The Latin American countries agreed that the EU commitment to cut tariffs, as stated above, constitutes the final results and thus no additional cuts would be sought during the Doha Round negotiations.³¹ During this period, following the rulings of the WTO Dispute Settlement Body,³² ACP countries were negotiating reciprocal free trade agreements in order to be in full conformity with the WTO regulatory framework.³³ Indeed, while the Cotonou Agreement temporarily safeguarded the non-WTO compatible Lomé trade provisions, a chapter on 'new trading arrangements' has also been incorporated under which 'the Parties agree to conclude new WTO compatible trading arrangements, progressively removing barriers to trade between them and enhancing cooperation in all areas relevant to trade'.³⁴ Therefore, after four phases of negotiations,³⁵ an Economic Partnership Agreement was signed with the Caribbean region on 15th October 2008 in Barbados, by the then European Commission Vice-President Siim Kallas, who believed that it '[would] renew the historic partnership' with the EU.³⁶

THE EU-CARIFORUM ECONOMIC PARTNERSHIP AGREEMENT

The EU-Caribbean Relationship

With the EU-ACP special relationship dating back to colonial trade preferences, Caribbean countries are highly dependent on agricultural exports to the EU which is their second largest agricultural export destination, after the USA.³⁷ In 2006, the EU accounted for some 19 per cent of their total exports.³⁸ Exports of Caribbean countries to the EU are not diversified, and are mainly concentrated on traditional agricultural products including cane sugar, rice and bananas. Income from trade in goods with the EU is important for the Caribbean – it represented EUR 4.1 billion in 2007.³⁹ The Caribbean region is not a homogenous group, and comprises both developing countries and one least developed country, Haiti. The EU's biggest trading partner in the region is the Dominican Republic, its other major partners being the Bahamas, Jamaica and Trinidad and Tobago.⁴⁰

Although the internal changes and new arrangements between the EU and Latin America reduce preferential margins for ACP countries, the EU maintains preferential banana imports from Caribbean countries under the EU-CARIFORUM⁴¹ Economic Partnership Agreement (hereafter the 'EPA'). While the EPA focuses primarily on trade liberalisation for goods and services, it also covers trade-related matters such as sanitary and phytosanitary measures, food security, environment and social issues. In the area of agriculture, the agreement sets out a clear objective: an increase in the competitiveness of production, processing and trade in agricultural products, in both traditional and non-traditional sectors, between the Parties.⁴² This must be achieved through the progressive removal of trade barriers⁴³ and other commitments undertaken by the EU and the Caribbean region.

Although it is certain that the granting of tariff-free access to imports from the EU implies a serious loss of revenue for Caribbean countries, it is noteworthy that the CARIFORUM was the first ACP region to sign an EPA. Errol Humphrey, Ambassador of Barbados and Vice-Dean of the CARIFORUM, gave eight reasons underpinning this decision.⁴⁴ Besides the fact that ACP countries had to conclude an EPA before the expiry of the Cotonou Agreement waiver, as Humphrey pointed out, a key issue affecting the Caribbean region was that following a careful review of the possible alternatives 'a development-oriented EPA was clearly the best option for all CARIFORUM member states'.⁴⁵

In light of the new EU trade regime with ACP countries, Article 37(6) of the Cotonou Agreement offered ACP countries which refused to sign an EPA an alternative relationship with the EU 'equivalent to their existing situation and in conformity with WTO rules'.⁴⁶ The other alternative given by the EU was the Generalised System of Preferences (GSP).⁴⁷ However, the EU GSP scheme is less generous than the Cotonou Agreement, and consequently the EPAs, in terms of product coverage and tariffs reduction. Hence, given the limited options, Caribbean countries were left with no choice but to negotiate a reciprocal EPA. Opting for the EU GSP scheme would have adversely affected the Caribbean region, and reduced access for Caribbean commodities, which enjoyed preferential access to the EU. The need to secure their existing preferences was therefore the main reason for CARIFORUM signing an EPA.⁴⁸

In addition, it must also be noted that the Caribbean is the only region which signed a 'full' EPA, covering not only trade liberalisation of goods but also free trade for services and investment. The signature of an 'interim' partnership, which is limited to industrial and agricultural goods only, would have been in conformity with the WTO legal requirements. The WTO rules on FTAs provide only for the elimination of customs duties on goods. The signature of a 'full' EPA was therefore not required by the WTO rules. However, while the President of Guyana called for the conclusion of a goods-only EPA,⁴⁹ the decision was made to sign a 'full' agreement and was justified by the Caribbean negotiators. They considered the EPA to be a partnership going beyond market access for goods, and included 'Development Cooperation, Trade in Goods, Trade in Services, and Trade related issues ([Sanitary and Phytosanitary] etc)'.⁵⁰ In their view, due to the issue of preference erosion and decline

in agricultural prices, there was a need for the region to 'diversify its export base,' and improve the region's access to the EU market for non-traditional sectors.⁵¹ The Caribbean is the only 'net supplier of services' among ACP countries, with the service sector being an important contributor to most CARIFORUM countries.⁵² Therefore ensuring privileged access to the EU services market was considered to be 'a prime requirement to drive increased growth of Caribbean economies'.⁵³ It is believed that the conclusion of an interim partnership 'would have entailed the adjustment cost of liberalization without garnering the gains from the inclusion of services, investment and development-boosting measures'.⁵⁴ The conclusion of such a partnership seemed therefore to be necessary for the Caribbean region. Ensuring privileged access for the Caribbean countries' non-traditional products to the EU market will improve their economic diversification, and allow them to be less dependent on agri-food exports which currently suffer from preference erosion.

The EPA ensures the perpetuity of the EU-Caribbean preferential trade relationship since it was concluded for an indefinite period of time.⁵⁵ The Caribbean countries are generally positive about the benefits of the EPA on their economic growth. For instance, Ramesh Dookooh, the President of the Guyana Manufacturing and Services Association pointed out that the agreed EPA is 'a very useful tool that allows manufacturers to expand their markets' but that the full potential of the agreement 'has yet to be seen'.⁵⁶

The Treatment of Caribbean Bananas under the EPA

The general measures

Since January 2008, bananas from the Caribbean region are given duty- and quota-free access to the EU market.⁵⁷ However, pursuant to Article 37(4) of the Cotonou Agreement, the EPA provides for the possibility of excluding products from trade liberalisation. The elimination of customs duties on EU exports does not apply to products indicated in Annex II of the agreement. This is in line with Article XXIV GATT 47 which requires liberalisation on only 'substantially all the trade' in goods.⁵⁸ The Caribbean countries were given the possibility of excluding about 20 per cent of EU imports from the scope of GATT liberalisation.⁵⁹ Agricultural products excluded from trade liberalisation are generally important local products, the dominant economic sectors which play a crucial role in the country's economy, living standards and rural development.⁶⁰ In the case of the Caribbean this includes bananas and also meat and dairy, as well as several other fruits and vegetables. This possibility would thus limit the impact of liberalisation on the Caribbean's economy.

With Caribbean countries' agricultural food products entering the EU market duty- and quota-free, the Caribbean region is ensured a permanent EU preferential market access for bananas that is compliant with WTO rules. However, there is no doubt that the permanence of these preferences is dependent on the EU not granting any tariff concessions for the benefit of other countries either through WTO negotiations or through specific bilateral agreements. In such a situation, competition in the EU banana market would increase, thereby marginalising the position of Caribbean banana suppliers on the EU banana market and hence undermining the value of the EPA.

The EPA provides further that the EU committed itself to preserve the traditional Cotonou trade preferences by maintaining 'significant preferential access within the multilateral trading system' for Caribbean countries' agricultural products.⁶¹ In this aim, the EU has committed to consult with the Caribbean region before engaging in trade policy developments and arrangements with third countries, which could impact on the competitive positions of the Caribbean countries' traditional products in the EU market. This also includes consultations on bananas, rum, rice and sugar exports.⁶²

Bananas and Sanitary and Phytosanitary issues

Sanitary and Phytosanitary (SPS) requirements imposed by the Parties can serve as barriers to agricultural product market access. The EU in particular imposes strict SPS and food safety standards, both on domestic and on imported products. While the EU acknowledges the necessity of maintaining and increasing the protection of plant, animal and human health, it promises under the EPA to facilitate the access of Caribbean countries' products by preventing and minimising unintended trade barriers as the result of SPS measures.⁶³ The EU has made a commitment to assist the Caribbean countries to comply with the EU SPS standards, by developing the capacity of CARIFORUM enterprises⁶⁴ and by sharing expertise. The EU has also promised to ensure a harmonisation of SPS measures within its market,⁶⁵ and to notify CARIFORUM on any SPS issues that may affect trade.⁶⁶ When such problems arise, the 'Competent Authorities' of the EU and the CARIFORUM must undertake consultations with each other in order to find a 'mutually agreed solution'.⁶⁷

The EU-CARIFORUM EPA Institutions

The commitments undertaken under the EPA are reinforced by four, joint consultative and decision-making institutions that have been set up in order to facilitate the implementation of the agreement. The Joint CARIFORUM-EU Council is the most important of these. It is composed of members of the Council of the EU, members of the European Commission and representatives of the governments of the Caribbean countries.⁶⁸ The Joint Council has been set up to supervise the implementation of the EPA and to monitor the fulfilment of its objectives. It is therefore necessary for the Joint Council to meet regularly, at least every two years. It is responsible for examining proposals and recommendations addressed by the EU and the CARIFORUM for the review of the EPA.⁶⁹ Final decisions with regards to all matters covered by the EPA rest with the Joint Council and must be observed by all the EPA participants.⁷⁰

The Joint Council is assisted by a Joint Trade and Development Committee which is the second most important institution of the EPA. Its members are representatives of the EU and the CARIFORUM at the level of senior officials who can meet whenever needed.⁷¹ The Committee must nevertheless meet at least once a year for an overall review of the implementation of the EPA.⁷² The Committee performs the administrative tasks of the agreement. It is particularly responsible for monitoring and controlling the implementation of the agreement in the areas of trade and development, in addition to resolving any disputes that may arise.⁷³

The EPA also provides for the establishment of a Parliamentary Committee to allow members of the EP and of the Caribbean states' parliaments to meet at regular intervals and exchange views.⁷⁴ The Joint Council must therefore communicate its decisions and recommendations to this Committee and provide it with additional information if requested.⁷⁵ The Parliamentary Committee can also make recommendations to both the Joint Council and Trade and Development Committee.⁷⁶ Finally, a Consultative Committee has been set up in order to 'promote dialogue and cooperation' with organisations of civil society, including the academic community and social and economic partners.⁷⁷ The Consultative Committee fulfils its activities on the basis of consultation by the Joint Council or on its own initiative. It can also make recommendations to both the Joint Council and Trade and Development Committee.⁷⁸

In parallel with the new trade obligations between the EU and Caribbean countries, the EU MS signed the Lisbon Treaty on 13th December 2007, which has brought important changes to the EU's agricultural policy. Consequently, agricultural trade relations between the EU and Caribbean

countries could be further complicated with the CAP now being a shared competence policy area following the entry into force of the Lisbon Treaty on 1st December 2009.

THE CAP: A SHARED RATHER THAN AN EXCLUSIVE COMPETENCE POLICY AREA

When the EU is given exclusive competence in particular areas, MS must give up their power entirely to the Union which is then given full authority to act. MS cannot then legislate or adopt any legally binding acts unless they are explicitly allowed to do so by the Union or when they have to implement EU acts.⁷⁹ MS are thus still limited in their capacity to act even when the EU has not acted in these areas. By virtue of the doctrine of pre-emption, which ‘denotes the *actual degree* to which national law will be set aside by [Union] legislation’,⁸⁰ there is in these areas, a ‘field pre-emption’ by the Union which excludes MS law from the fields occupied by EU law. All national laws will be considered invalid ‘even when such measures are not contrary to, or do not obstruct the objectives of, [Union] legislation in any way’.⁸¹ ‘Field pre-emption’ along with ‘rule pre-emption’ and ‘obstacle pre-emption’ have been identified by Schutze as the three types of relationships between the EU and national law within a regulatory area.⁸²

The EU CAP, as one of the most important EU policies, has been under supranational power since its creation. However, the Lisbon Treaty has reduced the level of control and now requires the EU to share this competence with its MS. Hence, while MS need the EU’s authorisation to act in areas within the exclusive competence of the EU, even when the Union has not legislated, Article 2(2) TFEU provides that MS may legislate and adopt legally binding acts in areas of shared competence when the EU has not exercised, or has ceased to exercise its competence.⁸³ This model of relationship between the EU and the MS refers to what Schutze has characterised as a ‘co-operative federalism under which actors are seen as ‘co-equals’.⁸⁴ Therefore, instead of having the existence of one authority, the legislative power is shared between the EU and the MS.⁸⁵ The MS are not precluded from endorsing their own legislation in fields of shared competence. The only condition for this is that such legislation must be consistent with any existing EU law.⁸⁶

Despite the default legal condition, it is worth noting that in some fields of shared competence, MS are allowed to impose additional restrictive requirements. This is for instance provided in the area of consumer protection where MS ‘shall not [be] prevent[ed] from maintaining or introducing more stringent protective measures’ than established by the Union in order to ‘contribute to protecting the health, safety [...] of consumers’.⁸⁷ Such permission should be understood as applying in situations where EU measures, which are supposed to ‘supplement’ national action,⁸⁸ do not safeguard consumer interests that were formerly protected by the law of MS. In such a case, a MS ‘must apply as a minimum’ the EU measures but can, ‘if they consider it necessary’ to protect public health, maintain their domestic rules even when stricter than EU law.⁸⁹

Given that MS now also have legal competences with regard to agriculture, they would be able to formulate and implement national legislation and policy in this area, in line with the conditions set out in Article 2(2) TFEU. This would have potential implications for the close interrelationship between farming and food safety standards, which could be reinforced with the implementation of new and stringent national food safety laws within the EU. Consequently, this would lead to less opportunity for market access for agricultural food products originating in developing countries.

THE EUROPEAN PARLIAMENT: A CO-LEGISLATOR IN CAP MATTERS

Another important change brought by the Lisbon Treaty in the area of agriculture is the introduction of the ordinary legislative procedure (hereafter the ‘procedure’) which significantly strengthens the

role of the EP in this policy area. This procedure was previously referred to as the co-decision procedure which operated from 1993 as the exception in decision-making within the EU. It involves both the Council of the EU and the EP, as the principal legislative bodies of the EU, which must jointly adopt a regulation, directive or decision on a proposal from the Commission.⁹⁰ Once adopted, these acts constitute legislative acts and are legally enforceable throughout the EU.⁹¹

Prior to the entry into force of the Lisbon Treaty, the powers of the EP in the area of agriculture were limited. The previous Article 37(2) EC Treaty required only consultation of the EP on agricultural matters, and the Commission and Council had no obligation to follow the EP's opinions. The consultation procedure vastly limited the EP's decision-making authority. Aside from using its 'power to delay' by failing to deliver its opinion, the EP had no official legislative powers to influence EU agriculture legislative outcomes. While the Council had no obligations to follow the EP's opinions it was however required to receive it before adopting any legislation. Non-compliance with such a condition would render the measure void.⁹²

The extension of the ordinary legislative procedure to the agricultural policy area is underpinned by the EU principle of democracy as confirmed by Article 2 TEU post-Lisbon. Democracy is one of the values which, as part of the European identity, the EU must respect. However, before the entry into force of the Lisbon Treaty, the EU was considered to be 'distant from its citizens' and thus 'insufficiently democratic,'⁹³ mainly because of the absence of democratic EU institutions' involvement in legislative matters. The Lisbon Treaty requires the Union to integrate and respect the principle of representative democracy.⁹⁴ The EP is composed of 'representatives of the Union's citizens' elected by direct universal suffrage since 1979,⁹⁵ tying the EU to the European public. Thus, while the national interests of the MS are represented by the Council of the EU, the EP is the only body which represents the citizens of the EU directly at Union level.⁹⁶ Consequently, any final agricultural laws will reflect the citizens' views.

The Lisbon Treaty has thus for the first time increased the powers of the EP in the agricultural area and provides that the EP is now a co-legislator with regards to measures relating to 'the common organisation of agricultural markets and the other provisions necessary for the pursuit of the objectives of the common agricultural policy'.⁹⁷ However, Article 43(3) TFEU excludes from the application of the procedure, measures on fixing prices, levies, aid and quantitative limitations in agriculture which continue to remain under the Council's responsibility. In accordance with the ordinary legislative procedure, as set out in Article 294 TFEU, the EP now plays an equal role with the Council in EU legislation on agricultural matters.⁹⁸ The EP now exercises legislative powers 'jointly' with the Council, which therefore means that the Commission and Council are now bound by the EP's opinions. The EP is now able to negotiate formally with the Council, and has the right to disagree with, and veto, any proposals. Such power could therefore lead to a lengthy legislative process, resulting in delay, for the adoption of proposed agricultural measures, which will not become law without the EP's agreement. There is no doubt that the full legislative role given to the EP would also give the European agriculture lobby enhanced political opportunity, thereby undermining contractual trade commitments contained in bilateral agreements between the EU and developing countries. Populist views with regard to the protection of domestic EU agriculture, and/or the price of food, will therefore have an increasingly greater impact on the EU's relations with developing countries in the area of agriculture. That said, it is highly improbable that ACP countries, being the main focus of this article, will be affected. These countries export their agricultural products to the EU market through the EPAs under which the EU has guaranteed preferential treatment for their products.

CONCLUSION

The Lisbon Treaty has given the EP and EU MS important room for manoeuvre in EU agricultural policy making. However, in light of the provisions of the EU-CARIFORUM EPA, there is little doubt but that these internal changes will affect the EU's relations with Caribbean countries in banana trade. The EU and the Caribbean region are bound by a partnership agreement providing firm commitments on agriculture and trade related areas, which must be undertaken by each party. Under this agreement, bananas imported from the Caribbean region are given duty- and quota-free access to the EU market. With the FTA being the main element of the EU-CARIFORUM EPA, the current EU agricultural trade relations with Caribbean countries now comply with WTO rules and should therefore be protected from legal challenges through a WTO dispute.⁹⁹ This is further confirmed by the Geneva Agreement, and the Agreement signed between the EU and the USA, which ended the long-standing conflict over bananas. These agreements now meet the claims of the Latin America countries and the USA, and both parties have agreed to end the dispute. In addition to this, EU banana producers have received direct decoupled payments under the Single Payment Scheme¹⁰⁰ since 1 January 2007.¹⁰¹ These payments are no longer linked to production and are classified within the WTO 'green box' of support measures, as having 'no, or at most minimal, trade-distorting effects or effects on production.'¹⁰² In light of these elements and given that the EU complies with its commitments, the EU banana import regime should now be free from future challenges.

Given that any future legislation in agriculture cannot be adopted without the prior consent of the EP, the Caribbean region will have to cooperate closely with the EP through the Joint Parliamentary Committee, whose first meeting took place on 15-16 June 2011 in Brussels. It would then be for the EP to find a balance between EU citizens' interests and those of Caribbean countries. How well this will be achieved remains to be seen. However, there is a risk that such an effective discussion could be undermined by the institutional aspect of the Caribbean region. Unlike the EU, the Caribbean region does not have a joint elected parliament. It is for the parliaments of each CARIFORUM states to designate one representative to the Joint Parliamentary Committee. This could lead to longer discussions in order to take into account the challenges at both regional and national levels. For effective dialogue to take place, it would also be necessary for each Caribbean country to provide clear information about their economic development and political situation.

The EU-CARIFORUM EPA agreement further requires that any policy changes, particularly if they are likely to impact on Caribbean countries' export capacity, must be discussed and agreed on by all partners within the established joint institutions. It is therefore important for Caribbean countries to maintain a constant dialogue with the EU on important issues with regard to the banana industry in order to ensure genuine consideration of their interests. This will be of particular importance for Caribbean countries with regard to EU food safety standards, because developing countries exporting bananas as well as other fruit and vegetables, are subject to the EU strict pesticides residues level.¹⁰³

It seems unlikely that the EP would impede this development of the EU post-colonial ties with the Caribbean region, particularly since it gave its assent to the EPA on 25 March 2009, and stressed that the agreement 'should be used to build a long-term relationship whereby trade support developments'.¹⁰⁴ The EU-CARIFORUM EPA is now in its sixth year of implementation. In November 2013, the EU-CARIFORUM Trade and Development Committee held its third annual meeting in Grenada in order to discuss progress and issues with regard to the implementation of the EPA. According to the EU trade official, Remco Vahl, this was an 'excellent opportunity to reaffirm the EU's continuing commitment to its longstanding partners in the Caribbean'.¹⁰⁵ He also pointed out that given the hopes and aspirations inherent in the EPA, it is important for the EU and the CARIFORUM to 'make the EPA work for people across the Caribbean region'.¹⁰⁶ At the time of

writing, discussion of the mandatory first-five yearly review of the EPA has still not been completed.¹⁰⁷ This review will give the Caribbean region the possibility to seek amendments to the provisions of the EPA if needed.¹⁰⁸

Caribbean countries and any countries bound by a contractual trade agreement with the EU, such as the EPA, are thus protected from the possible effects of the Lisbon Treaty. An important cleavage has developed between the EU former colonies which have special preferential arrangements with the EU, and the balance of the world's developing countries which remain outside these schemes. This is for instance the case of developing countries which can only benefit from the EU GSP. Under this scheme, the EU unilaterally grants tariff preferences to developing countries' agri-food products without entering into contractual commitments. It therefore decides on the rules that guide their allocation and, as a consequence, the conditions contained in the GSP scheme cannot be negotiated by the beneficiaries. This diminishes the value of the preferences and keeps the beneficiary countries 'in a permanent state of insecurity as to the extent and the duration of the preferences'.¹⁰⁹ Bananas are classified as EU 'sensitive' products under the GSP scheme.¹¹⁰ As a consequence, they benefit only from a partial tariff reduction of 3.5 percentage points below the normal MFN tariff rates.¹¹¹ Given this, it can therefore be assumed that the changes instigated by the Lisbon Treaty, associated with the CAP's promotion of a high level of protection for the environment and consumer's health, could be detrimental for any developing countries left outside such a formal agreement.

Correspondence Address

[v.constantlaforce@gmail.com]

¹ European Commission White Paper, 'Opening the Door to Development: Developing Country Access to EU Markets 1999-2003', Brussels, 23/05/2005.

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