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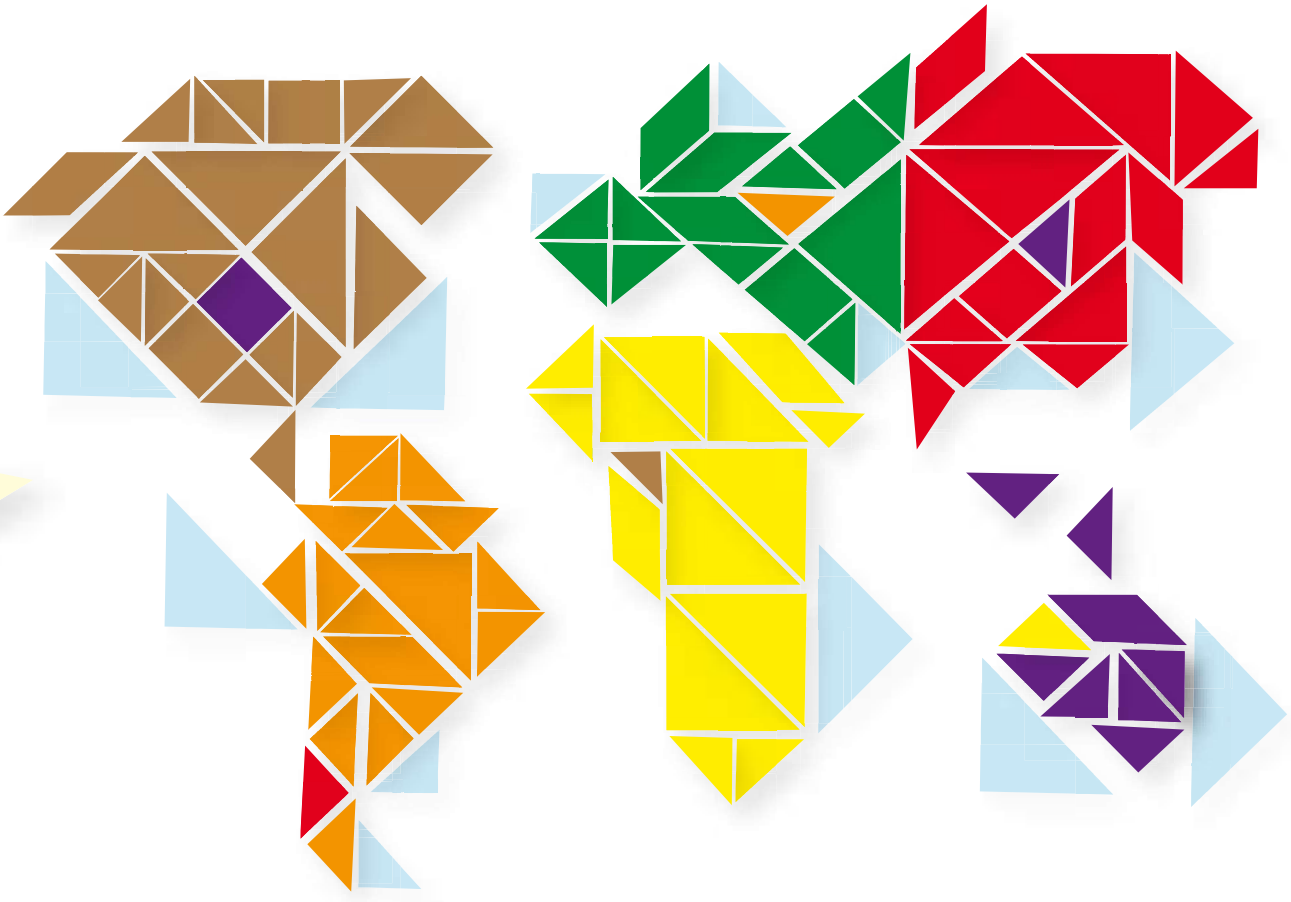
IMAGINING CULTURES OF COOPERATION:
UNIVERSITIES NETWORKING TO FACE THE NEW DEVELOPMENT CHALLENGES

Proceedings of the III Congress of the University Network for Development Cooperation (CUCS)

Turin, 19-21 September 2013



POLITECNICO DI TORINO

UNIVERSITÀ DEGLI STUDI DI TORINO

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Imagining Cultures of Cooperation: Universities networking to face the new development challenges.

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FOREWORD

The Proceedings of the CUCS Torino 2013 Congress are the result of the fruitful confrontation on development and cooperation activities which many Italian universities, as well as members of the international development cooperation system are engaged in. The organization of the CUCS Torino 2013 was possible thanks to collaboration between the Italian universities belonging to CUCS (Italian University Network for Development Cooperation), the General Directorate of Development Cooperation at the Ministry of Foreign Affairs and the Ministry of Education and Research.

The fact that the two Turin universities chose to promote and organize in synergy the Congress and the publication of the Proceedings is due to their desire to contribute to the consolidation of a local development cooperation system, in partnership with all those who made the event possible. Special thanks go to: the local institutions (the Piedmont Regional, the Province of Turin, the Municipality of Turin, the Network of local municipalities for peace - Co.Co.Pa., Gruppo Trasporti Torinesi-GTT), the Turin School of Development (ILO), the Chamber of Commerce (CCIAA), Compagnia di San Paolo, Fondazione CRT and the Piedmont NGOs Consortium.

The very title of the Congress - "Imagining cultures of cooperation. Universities networking to face the new development challenges " - reflects multiple objectives. Here below are the main ones:

- the acknowledgement of the creative and innovative role which academic knowledge can produce and make available for the international development cooperation system;
- the joint commitment of the two Turin universities in the field of international development cooperation, as demonstrated by the 2013 Turin CUCS Congress. Their conviction is that cooperation is worthwhile it and that it is necessary "to cooperate in order to cooperate better";
- the active participation of the universities in the debate on the definition of the Post-2015 Development Agenda, by contributing with research, knowledge and the education of the future ruling classes, who will eventually be required to turn the objectives into policies and concrete results;
- a deep reflection on the relationship between development cooperation and the internationalization of university institutions and, more in general, of our territory.

In most cases academic mobility and university internationalization processes are first of all inspired by a competitive approach. The organization of the CUCS Torino 2013 Congress, its outcomes included within these Proceedings, and the projects that were born during the days of the Congress testify the richness, the effectiveness and ultimately the strong necessity for a cooperative approach in order to promote awareness in citizens who will be active and desirous of responding to the new global challenges.

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GENERALIZED TARIFF PREFERENCES FOR DEVELOPMENT AND EMERGING COUNTRIES: ASSESSMENT AND PERSPECTIVES

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ABSTRACT

The paper addresses the role and efficacy of trade preferences within development cooperation policies. It does so from a legal perspective, in relation to past, current and prospective frameworks of trade preferences for developing countries, and takes into account the role of private business as major actors of development in beneficiary countries, given that the trade (and investment) component of development policies relies on firms for successful implementation. Moreover, it looks at emerging countries, particularly African ones, as significant examples of the evolving relevance of trade preferences to processes and actors involved in promoting development. Accordingly, the main problematic issues will be outlined with regard to the traditional trade instrument designed to foster development, i.e. the Generalized System of Preferences adopted since the 70s by developed countries to extend preferential duties on imports of products originating from developing countries (Section 2). The legal arrangements backing such trade regime up with respect to resource-seeking and export-oriented investments by foreign firms into beneficiary countries, on the one hand, and the recent trend to raise export restrictions on raw materials and mineral products by some governments, on the other hand, will also been introduced into the discussion (Section 3). The challenges thus identified will be described in relation to the Sub-Saharan emerging countries throughout the evolving trade regime applied by the European Union for the last decade, that is also informed by World Trade Organization-compatibility, as compared with China's policy in the region (Section 4). In conclusion, some critical considerations will be drawn as regards the post-2015 development cooperation strategies and the increasing role attributed to trade therein, in light of recent academic contributions to their formulation by the EU.

PREFERENTIAL TRADE AS A COMPONENT OF DEVELOPMENT COOPERATION POLICIES

Focusing on trade within international development cooperation prompts some general observations. In particular, it is clear that any effort on enhancing trade performance of developing countries ultimately relies on private, for-profit actors' responses to the policies designed to that effect, thus strengthening the relevance of such actors with respect to public institutions and not-for-profit sectors. This, in turn, calls for carefully crafted incentives and guarantees for (both domestic and foreign) investments in the sectors envisaged by 'trade and development' strategies. The other general observation concerns the instruments through which the trade pillar of development policies is implemented. The traditional trade tool for development, i.e. unilateral concessions by developed countries of preferential tariffs upon the importation of goods originating from beneficiary developing countries, has attracted many studies and controversial assessment as to its effectiveness. The reasoning coming into play in the discussion concerns both the structural elements characterizing these arrangements – as will be outlined in Section 2 – and the general trend towards the erosion of the margins for preferences available to developing, beneficiary countries (following successive rounds of multilateral trade liberalization and the widespread conclusion of free trade agreements). Preferential trade with developing countries aims at boosting their exports thus promoting the industrialization and diversification of their economy, and contributing to economic growth. However, this rationale is hampered by the fact that developing countries acceding liberalized international markets may not have or develop sufficient capacity for coping with such integration.

These observations suffice to underline the point for a critical assessment of the recourse to trade preferences for development alone. Indeed, several other trade or trade-related policy interventions such as regulating non-tariff barriers to trade, offering aid for trade, promoting and protecting investment, guaranteeing protection and enforcement of intellectual property rights, extending loans and guarantees to private actors investing in strategic sectors, assisting developing countries to improve the domestic business environment and, enhancing corporate social responsibility have increasingly appeared as necessary to foster development. Thus, other instruments alongside or instead of tariff preferences are envisaged by countries interested in a 'modern' 'trade and development' strategy.

Imagining however that this dynamic is inherent to the evolution of 'trade for development' strategies without taking into account the broad international legal environment of international exchanges as well as the changes that occurred in the world economy over the last decades would be misconceived and unrealistic. In particular, the multilateral trade rules set through the GATT and the WTO agreements, and the stagnation of the Doha Round of

negotiations since 2000, have influenced the strategies of States. Also, the problematic economic growth of emerging countries like the BRICS and several other countries has played a significant role in the revision of the existing 'trade for development' instruments, such as the unilateral tariff preference arrangements. The several instances in which these two factors have impacted on the undergoing changes of the trade component of development policies will be outlined in Sections 2 and 3.

The purpose of this paper is to assess the legal frameworks of these policy developments and to discuss the critical aspects they involve in relation to emerging countries. It should be noted that the paper concentrates on trade in goods, although the services sector has been growing in importance in trade relations with the developing world and especially with the emerging countries. Section 4 of the paper elects Sub-Saharan countries among emerging countries as particularly suitable to describe what is analysed in general and theoretical terms in the previous sections. There are several reasons for this choice: the potential effects of the shift from auto-selection to objective indicators of developing needs for eligibility to tariff preferences; the trade-related approach to sustainable development and eradication of poverty followed by the EU within the general evolution of EU-ACP relations, which owes its specificity to historical ties; the major influenced played by WTO rules and the claims of third States within the WTO; the way other emerging countries, in particular China, approach developing countries and how this may affect developed countries' trade arrangements with the region.

THE GENERALIZED SYSTEM OF PREFERENCES: ITS RATIONALE AND STRUCTURE (TAKING THE EU AS AN EXAMPLE)

The idea of tariff preferences for development represents an application of the principle of dualism of rules applying to countries with different levels of developments, that was claimed by the "New International Economic Order" and characterizes the right to development [1]. It emerged at the first UNCTAD conference in 1964 and received unanimous support at its second conference four years later, when Resolution 21 (II) was adopted. The text called for the establishment of a "generalized, non-reciprocal, non-discriminatory system of preferences in favour of the developing countries, including special measures in favour of the least advanced countries". The objectives of the Generalized System of Preferences (GSP) were encapsulated in the title of the Resolution ("Expansion and Diversification of Exports of Manufactures and Semi-Manufactures of developing countries") and were stated in the following terms: "(a) To increase their export earnings; (b) To promote their industrialization; (c) To accelerate their rates of economic growth" [2]. Thus, at least on the surface, the basic elements of such a preferential arrangement consist of its unilateral adoption, general application, non-discrimination (apart for the most preferential treatment for least developed countries), lack of reciprocity, and focus on manufactured goods as the main beneficiary products in order to reduce reliance of developing countries on export of primary products. Indeed, absence of across-the-board preferences in terms of product coverage implies a kind of *de facto* discrimination across beneficiaries in favour of those countries having "greater capacity to produce the manufactured goods that are designed for preferential treatment" [3].

Such an arrangement represents a departure from the 'most-favoured-nation' (MFN) rule expressing the non-discrimination principle on which the post-world war II multilateral legal trade regime is founded, and it cannot be justified under the regional integration exception. Art. I GATT provides the MFN treatment according to which any GATT Party (now, any WTO Member) shall receive the best treatment accorded to any third country as regards customs duties primarily and among other issues. This clause is unconditional, meaning that the MFN treatment extends to all other parties automatically without any advantage in return. The only exception admitted to this rule in the original framework of GATT 1947 refers to the creation of customs unions or free trade areas (Art. XXIV GATT). This recognizes the potential benefits of closer integration of the economies of the parties to international trade, provided that certain conditions are met to assure that these preferential arrangements work as 'building blocks' rather than 'stumbling blocks' for exchanges with third parties. In particular, among other conditions, this means that tariff preferences are accepted under GATT law by means of international agreements, in so far as they consist of the elimination of duties or other restrictive regulations of commerce on substantially all the trade (in terms of product coverage and volumes of trade) between the constituent parties.

The acceptance of the GSP within the GATT was premised on the introduction of Part IV on Trade and Development in 1964, which laid down non-binding commitments in favour of developing countries. The embodiment of the GSP arrangement was firstly realized on a 10 year basis by means of a Decision adopted in 1971 [4] and permanently in 1979 through the Decision generally referred to as 'Enabling Clause' [5]. Based on it, contracting parties may accord differential and more favourable treatment to developing countries as regards tariffs levied on imported products in accordance with the GSP. Thus, the general features of the arrangement conceived at UNCTAD apply. The Decision also states that the preferential treatment “shall [...] be designed and, if necessary, modified, to respond positively to the development, financial and trade needs of developing countries”.

An authoritative source of interpretation of several conditions attached to the GSP arrangement came later in 2004 from the WTO Appellate Body (AB)'s report on the *EC-Tariff Preferences* dispute brought by India [6]. The AB considered the Enabling Clause as an exception to the MFN rule. It specified that the requirements on the "generalized, non reciprocal and non discriminatory" nature of the preferential arrangement for developing countries (set out at

footnote 3 of the Enabling Clause) are binding (paras. 146-147). It also clarified that the requirement of "generalized" preferences refers both to the entire category of developing countries (i.e., not only to former colonies - para. 155) and to product coverage. It interpreted the "non-discrimination" requirement in the sense that donor countries are not prevented from according differential treatment among developing countries provided that this is based on differences in their "development, financial and trade needs", to be assessed on objective grounds, and responds positively to such needs (paras. 163-164). On this point, the AB outlawed the Panel's findings (at para. 193) [7].

Central to the issue of emerging countries, the system builds in a 'graduation clause'. Para. 7 of the Enabling Clause *calls* less-developed countries to "participate more fully in the framework of rights and obligations" under the GATT, as their economies progressively develop and thus differently, according to the achieved degree of economic development. In the WTO era, the approach changed. The system now *aims* at eliminating discrimination and integrating developing countries into the general regime, as stated in the Ministerial Declaration adopted at the first WTO Ministerial Conference, 1996 (para. 6) [8]. Another main element concerning development needs within the WTO legal framework relates to Least Developed Countries (LDCs - i.e., countries falling in the category officially recognized in 1971 by the UN General Assembly) [9], which are granted privileged status across the whole system of rules [10]. With respect to commitments and concessions, this is affirmed by Art. XI, para. 2 WTO Agreement.

The GSP did not result in a common arrangement implemented by developed countries, which, on the contrary, separately adopted their own GSPs. There are currently eleven donor countries, namely Australia, Belarus (a non-WTO member in the process of negotiating accession, at the same time being a GSP beneficiary under some other donors' arrangements), Canada, the EU, Japan, New Zealand, Norway, the Russian Federation, Switzerland, Turkey and the United States [11].

Against this background, the EU's and the US's GSP arrangements, in particular, share some peculiar features which are of particular interest for the purposes of this paper focusing on emerging countries. These consist of mechanisms of eligibility, country and product graduation, tariff modulation, safeguards, differentiation, and conditionality. Their main implications for the treatment of emerging countries by GSP donors will be now outlined, taking the EU's GSP as an example.

The EU adopted its GSP arrangement in 1971 [12]. Since then, general schemes were renewed on 10-year cycles, each adapted to the evolution of international trade every year, and more recently every three years [13]. Since the Nineties, the EU combined the original objectives of the system inherent to the link between "trade and development" with specific objectives on the promotion of and respect for the environment, labour rights, human rights and good governance in the beneficiary countries. The currently-in-force Regulation (EC) No. 732/2008 [14] will be superseded by Regulation (EU) No. 978/2012 (the 'new Regulation' or the 'new EU GSP') [15] on 1 January 2014, to be applied for an extended period of ten years until 2023 for purposes of legal certainty and stability [16]. These two schemes are designed to take account of the above-mentioned AB's decision, which indeed dealt with the WTO compatibility of the special regime to combat drug under the EU GSP previously in force.

Under the current and the new EU GSP schemes, preferential treatment is granted according to three regimes: the general regime, the incentive arrangement for sustainable development and good governance ('GSP+'), and a special arrangement for the LDCs which offers duty-free market access into the EU ('Everything but Arms', or EBA). The new EU GSP scheme is designed with a view to taking more into account the diversity of the developing countries and the purpose is to focus on helping the less advanced among them (whereas 7)[15]. In a nutshell, it is premised on the assumption that because of global tariff erosion (see Section 3 below) maintaining tariff preferences for the more advanced developing countries would imply too high competitive pressure on poorer countries [16]. And, as is evident in the language of the preamble part of the Regulation, this approach is meant to abide by the non-discrimination requirement for generalized tariff preferences set by WTO law as interpreted by the AB in the *EC-Preferences* decision (whereas 9) [15].

This overall approach is evident in the criteria adopted for benefitting developing countries of trade preferences under the general regime. Hereunder, tariff reductions are granted on the products covered by the unilateral arrangement instead of the MFN duty applied by the EU. To benefit from this regime, GSP eligible countries shall not have been classified by the World Bank as high-income or upper-middle income countries during three consecutive years immediately preceding the update of the list of beneficiary countries. Accordingly, and subject to annual revision, eight countries recently classified as high-income countries and fourteen upper-income countries will no longer benefit from EU GSP trade preferences from January 2014; among these, Brazil figures prominently [17]. They nonetheless remain eligible countries under the EU GSP, in order to benefit from the ordinary tariff preferences again, in case their classification downgrades. It is quite interesting to note that the new system will depart from the current one, abandoning the additional consideration for the diversification of exports of potential beneficiary countries - a criterion that has maintained Brazil among beneficiary countries so far [16].

However, even for those countries which remain eligible for tariff preferences under the general regime, a product graduation mechanism is foreseen in order to exclude certain products originating in a specific country when they have become competitive enough, as reflected by the fact that their exportation exceeds a certain threshold of all GSP imports of the same products into the EU. The new EU GSP will increase the threshold percentages determining such graduation (textiles products being subject to a lower percentage and to other specific provisions aimed at safeguarding the EU production). The new GSP legislation will make graduation more targeted on narrower product sectors. It will also strengthen the devices construed so as to avoid graduation in case of non-diversification of a beneficiary's exports -

an occurrence which could disrupt its economy. As a result of these new rules, two BRICS will be denied tariff preferences for more product sectors than they currently are, China for precisely twenty-seven sectors in total (six more than under the current regime, including several 'sensitive' products as will be outlined next) and India for six (five more); also Costa Rica, Ecuador, Indonesia, Nigeria, Thailand and Ukraine are concerned with one or two sectors each [18] [16]. The graduation list is to be reviewed on a three-year basis.

Although the EU GSP scheme has a wide product coverage, it differentiates between 'non-sensitive' products, on which duties are suspended, and 'sensitive' products, on which duties are fixed at a specified lower rate than the MFN duty. The new EU GSP widens the scope of free market access granted to products originating from beneficiary developing countries, as it introduces new products or moves previously sensitive products into the category of non-sensitive products. 'Sensitivity' is defined in order to take account of the situation of the sectors manufacturing the same products in the Union. For example, most mineral products covered by the new EU GSP scheme are considered non-sensitive products, while the majority of textiles and machinery products are sensitive, with a more balanced split of metals between sensitive and non-sensitive products (Annex V) [15]. This is of a certain importance when assessing the effective pursuance by the GSP scheme of its overall objective of fostering the development of beneficiary countries through export-led industrialization and diversification.

Safeguards are also foreseen in the form of the reintroduction of the normal Common Customs Tariff duties. This procedure is managed by the Commission and initiated upon request by Member States, EU producers or on its own. It may take place when a product originating in a beneficiary country is imported in volumes and/or at prices which cause, or threaten to cause, serious difficulties to Union producers of like or directly competing products.

Another relevant mechanism provided by the EU GSP scheme, in combination with the new EU GSP origin rules [19], concerns origin cumulation. Products can be imported into the EU under the GSP tariff preferences only if they originate from beneficiary countries according to the specific rules of origin unilaterally set by the EU. Although this is a highly technical issue [20] [16], it is worth pointing out that the new EU rules aim at facilitating the acquisition of origin for purposes of GSP preferential treatment and also favour regional economic integration by allowing products produced in several countries to satisfy the applicable criteria conferring origin on a cumulative basis. Thus, the EU has elected four regional groups of countries for purposes of regional cumulation [19].

Lastly, both positive and negative conditionality mechanisms are put in place. The former subjects the extension of additional tariff preferences to a beneficiary country's respect for human rights, environmental protection and good governance. The special incentive arrangement (GSP+) is aimed at those eligible countries which abide by the condition of having ratified and implemented certain conventions on the environment, labour and human rights and good governance. This is intended as an objective condition for discriminating between eligible countries, as required by the WTO AB's interpretation of the non-discrimination requirement under the Enabling Clause. In fact, additional preferences should address the special burdens and responsibilities resulting from conventional commitments undertaken by vulnerable countries suffering from a lack of diversification and insufficient integration within the international trading system. Thus, this mechanism is driven by the general objective of the scheme too. The negative conditionality mechanism provides the temporary withdrawal of the preferential treatment, under whatever regime, upon the occurrence of systematic violations of core human and labour rights, shortcomings of customs controls, and also for "serious and systematic unfair trading practices including those affecting the supply of raw materials, which have an adverse effect on the Union industry and which have not been addressed by the beneficiary country", among other conditions (art. 19, para. 1 (d)) [15].

TRADE PREFERENCES IN CONTEXT: THEIR EFFECTIVE IMPACT AND THEIR INTERACTION WITH FOREIGN INVESTMENT AND WITH EXPORT RESTRICTIONS

Whether and how trade preferences (have) effectively work(ed) for the development of developing countries is a matter of debate. The most evident point is that the margin of preference is eroded by successive multilateral tariff negotiations and by the continuing expansion of free trade agreements. Many of the mechanisms described above have also been criticized [21] [22] [23].

It has been suggested that criteria for eligibility, graduation, product coverage, tariff modulation and safeguards would rather meet the needs of preference granting countries for preserving imports pressure and surges in sensitive industrial domestic sectors [3]. Conversely, in the political rationale and legal texts of the (EU) GSP, at least the first two mechanisms are justified in light of the general objective to differentiate among developing countries according to their development needs on the basis of the non-discrimination requirement, in line with the interpretation of the Enabling Clause in the *EC-Preferences* case. Indeed, this should be the authentic spirit behind the inclusion in the Enabling Clause of the provision according to which "such treatment accorded by developed contracting parties to developing countries be designed and, if necessary, modified, to respond positively to the development, financial and trade needs of developing countries". At the same time, however, safeguards from import surges at least cannot be outlawed from a unilateral, voluntary, non-reciprocal preferential arrangement, and this was already embodied in the GSP envisioned by UNCTAD [3].

The non-reciprocity requirement applying to the GSP arrangement has also been challenged, with reference to those GSP schemes which indeed make the granting of preferences conditional on some specific behavior of the

beneficiary country. Moreover, a relevant point relates to the selection of objective criteria for granting preferences and differentiating among beneficiary countries (due to the lack of a common regime and to the unilateral, "*octroyée*" or "gift" nature of the arrangement, each donor country sets its own criteria according to its internal process, although it has the burden of proving their compatibility with the requirements set by the Enabling Clause) [24]. It has also been suggested, and rejected, that reciprocity (legally conveyed by treaties) would ensure greater market access concessions by developed States [25].

As has been seen, both forms of preferential trade treatment depart from multilateral trade rules based on non-discrimination but, as almost all countries in the world are WTO-members, unilateral or conventional arrangements have also to abide by the requirements and limitations provided by WTO law - and may be challenged before the WTO dispute settlement system. All aim at and rely on private business as the drivers of development. GSP and free trade area success depends on their final users, i.e. firms. Therefore, one may argue that they should be coupled with policies leading investment strategies by firms from donor countries into beneficiaries countries as well as by domestic firms therein. In both cases, investments are export-driven, that is, they do not seek to access the local market but are aimed at sourcing donor countries' industries and markets with resources and manufactured goods.

Preferential arrangements - and resource-seeking investments in GSP beneficiary countries - are confronted with a recently increasing phenomenon, that is, the introduction of export restraints of raw materials and mineral products by certain developing countries. Quantitative restrictions on exports are prohibited under GATT Art. XI, unless "temporarily applied to prevent or relieve critical shortages of foodstuffs or other products *essential* to the exporting contracting party". But the violation of such provision may seek justification under the GATT general exceptions, which provide for the conservation of exhaustible natural resources among other justifications. Other forms of export restraints may be put in place too, such as export duties (which are not prohibited *per se* under WTO law).

A recent instance concerns Chinese measures restraining exports of raw materials and of rare earths, which have been challenged by the EU and other countries within the WTO. It appears from the decisions adopted so far [26] [27], development considerations may come into relevance under two opposite perspectives. On the one hand, the implications of export restraints of natural resources for the export performance of other developing countries can easily be derived from the observations made by the claimants. Export restraints not only produce scarcity and cause higher prices in global markets, but they also advantage domestic industry by ensuring it sufficient supply, and lower and more stable prices for the materials concerned. On the other hand, China claimed that under Art. XI interpreted in light of the 'trade and development' provisions of the GATT (Art. XXXVI in Part IV), a developing country may adopt export quotas on 'primary products' which have a role in "securing economic diversification through the development of domestic processing industries" (para. 7.265) [26]. However, the panel and the AB ruled that Art. XI does not hold a different meaning or should not be applied differently for developing countries (para. 7.280) [26]. China also evoked the customary norm in international law of sovereignty over natural resources as "developed in recognition of the 'essential' role that natural resources play in the progress and development of states that possess those resources" (para. 7.265) [26]. How can these points be connected and their relevance to preferential tariff arrangements for developing countries assessed? Although both sides of the legal dispute make suggestive arguments, it seems that under WTO law none of them relevantly apply to GSP schemes. Countries are 'enabled' but not obliged to extend tariff preferences to developing countries and it is generally understood that Part IV of the GATT enounces non-binding commitments in favour of developing countries; any country, independent of its level of development, may challenge another WTO member's measures nullifying or impairing the benefits accruing to it from WTO law. Moreover, beneficiary countries, and economic operators, are not bound to accept or apply the preferential duty accorded under an importing country's GSP, and they are not prevented from adopting export restraints in WTO-compatible forms counterbalancing that tariff advantage.

THE CASE OF AFRICAN EMERGING COUNTRIES: THEIR PLACE WITHIN THE EU'S POLICY TOWARDS THE ACP COUNTRIES AND OTHER APPROACHES

Against these scenarios, the African continent is a significant setting for analysis as regards the dynamics involved in the economic relations with emerging economies. The phenomenon of "African lions" [28] and other African emerging countries witnessing higher export and/or GDP growth rates than the global rates [29] triggers policy responses by both developed and emerging countries (such as China and India) [30]. The policy approaches differ among trading partners, and this has stimulated a debate in development studies, although it has so far received less focused attention in the legal literature as compared with other disciplines. For example, a recent contribution "assesses the 'competitive pressure' that China's growing presence in Africa exerts on the European development policy regime" by focusing on Ethiopia [31]. The following analysis shows that the EU approach to African, Sub-Saharan emerging countries is to be framed within the EU-ACP relations and explains the set of legal instruments deployed accordingly. It also compares these instruments to those involved in China's approach to the region.

The Sub-Saharan countries including South Africa comprise the African component of the ACP Group of States [32]. As a result of historical ties, ACP States have always enjoyed a privileged position in their trade relations with the EEC/EU compared to other developing countries [33]. Throughout the Yaoundé I-II and the Lomé I-IV conventions, and still under the Cotonou Agreement on a temporary basis until the end of 2007, the EU granted ACP countries more

non-reciprocal, preferential tariff treatment than the preferential treatment given to other developing countries under the EU GSP. This privileged regime was challenged before the WTO dispute settlement bodies, which ultimately ruled against its compatibility with WTO law [33]. The trade provisions encapsulated in the Cotonou Agreement (the new general framework for EU-ACP partnership signed in 2000) was aimed at bringing EU-ACP trade relations into conformity with WTO law while at the same time preserving their more preferential character (arts. 34-37) [34]. Thus, a waiver from WTO obligations was obtained according to Art. XXV, para. 5 GATT for a transitory period until the end of 2007 [35]. Meanwhile, the Cotonou agreement provided for negotiations on a regional basis of reciprocal, free trade agreements within the Economic and Partnership Agreements (EPAs). Up to 2007 and indeed now, these are far from being concluded homogenously, on the ACP side, among regions and within each region (the Carribean, the Pacific and four African regions).

On the EU side, in order to comply with WTO law, the so called 'Market Access Regulation' was adopted in 2007 to unilaterally apply the conventional trade arrangements with those ACP countries having already concluded an EPA or an interim, goods-only trade agreement which however had not entered into force yet as of 1 January 2008 with the EU. Since then, lack of this conclusion, or the undertaking of the necessary steps to ratify the already concluded agreements, on the part of ACP countries, the EU applies its GSP scheme, thus equating trade preferences to the ACP countries concerned to the other eligible developing countries [36].

As a result, the picture of EU-ACP trade rules is one of great fragmentation and diversification, even among Sub-Saharan emerging countries [37]. As for African ACP countries, only the Seychelles, Zimbabwe, Mauritius and Madagascar within the Eastern and Southern African region are covered by the Market Access Regulation and thus their exports towards the EU benefit from duty-free access on all products except arms [38]. Conversely, Comoros and Zambia within the same region and other countries from the other African regions having concluded an interim agreement or a full EPA with the EU have recently been moved from the Market Access Regulation. They are thus treated under the EU GSP scheme together with the other African ACP countries which have not concluded any agreement with the EU so far. This implies that, as in the case of Nigeria mentioned above, they are subject to the product graduation mechanism or, if and as soon as their economic growth evolutes to reach upper-income or high income status for three consecutive years, they are excluded from the GSP general regime, thus being treated on a MFN basis. This would put competitive pressure on them in comparison with the other ACP countries, with the developing countries having concluded a free trade agreement with the EU (such as the North-African countries or Central-American countries), with those developing countries that, although a beneficiary of the EU GSP arrangement, have seen some products graduated out of it, or even with developed countries having concluded free trade agreements with the EU, such as Singapore.

Under the overall political and institutional framework of the Cotonou Agreement, interim EPAs would establish free trade areas and comprehensive EPAs would extend trade rules to matters such as agricultural products, services, intellectual property rights, competition, and accompanying measures on development cooperation. As regards foreign direct investment by the EU, the Cotonou Agreement calls for the conclusion of agreements and for the introduction of general principles in EPAs as regards investment promotion and protection (art. 78) [34]. Therefore, bilateral investment treaties (BITs) between single African countries and EU Member States still feature as the main legal instruments in this subject field.

This 'model' significantly differs from other forms of economic cooperation proposed to African countries from outside the region. China and India have recently developed their own Africa Policy [30]. Focusing on China, there are no preferential trade agreements in force with any African country [39]. LDCs African countries benefit from the duty-free treatment for LDCs, which China extends to a few other countries in the Asian continent [40]. On the contrary, BITs have been concluded between China and many African countries in the last fifteen years [41]. Because of China's interests in outward foreign investment towards Africa and because BITs are reciprocal by nature, these treaties partly follow the more liberal approach to international investment regulation adopted by China since the late Nineties [42]. This notwithstanding, China resists pressure from developed negotiating partners to align to the global tendency towards comprehensive, trade and investment liberalization agreements on a bilateral or regional basis [43]. Such legal landscape concerning China-Africa relations does not seem to be subject to changes for the near future [44]. Another difference between the EU's and China's approach to development linked to trade is that China premises it on the principle of non-interference and rejects conditionality, while the EU stresses the importance of ownership and respect for human rights (being an 'essential element' of the partnership; art. 9) [34]. Overall, China's economic cooperation policy is not considered as being framed within international development strategies [31].

CONCLUDING REMARKS ON THE TRADE ASPECTS OF THE FUTURE DEVELOPMENT STRATEGY DESIGNED BY THE EU

In the light of the above analysis, some brief concluding comments are outlined. There is an unresolved tension between the overall objectives of the GSP arrangement - that is, to respond positively to the economic, financial and development needs of developing countries through preferential tariff treatment - and the policy limitations and conditions at which developed countries consent to grant such treatment. With a view to integrating developing countries into the world trading system, tariff preferences risk not effectively pursuing their development objectives if

they are not coupled with other sound trade-related and investment policies. At the same time, different legal frameworks for trade relations applying between the EU and Sub-Saharan African countries show that emerging countries have different positions and preferences towards preferential trade arrangements with major trading partners. If trade emerges as a central driver of development, it must be intended in broader terms than the traditional instrument of trade preferences, because of the pitfalls, ambiguities and doubts on their efficacy.

The academic world has recognized this shift in developing strategies towards more focused preferential trade arrangements and more comprehensive trade policies. Indeed, the EU seems to favour this direction. In so doing, it both addresses initiatives on private business (in the form of credit, loans and guarantees) and on public institutions (through regulatory engagements but also institution-building and trade facilitation). Recent designs of development cooperation policies by European actors emphasize the role of trade as compared with other components of international development cooperation, mainly official development assistance. In a recent contribution to the debate on a post-2015 global framework to succeed the Millennium Development Goals (MDGs), three independent European research institutes identify trade as a key driver of development provided that trade policies are designed to tackle the problems of marginalized and vulnerable economies by promoting economic and trade diversification and by creating productive jobs [45]. In its documents on the future of EU development policy [46], the European Commission builds the new EU's 'trade and development' goals upon the acknowledgment that "trade-driven development is possible and that open markets can play a major role in generating growth" [47].

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NOMENCLATURE

AB	Appellate Body
ACP	African, Caribbean and Pacific
BIT	Bilateral Investment Treaty
BRICS	Brazil, Russia, India, China, South Africa
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
LDC	Least Developed Countries
MDG	Millennium Development Goals
OJ	Official Journal (of the European Communities/European Union)
UNCTAD	United Nation Conference on Trade and Development
WTO	World Trade Organization

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