# Background Paper on the ACP-EU Negotiations on the Future of the Lomé Convention

Klaus Schilder, 3rd updated version May 2000

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**3rd updated edition**

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## 1. Introduction

> *„Now, here, you see, it takes all the running you can do, to keep in the same place. If you want to go somewhere else, you must run at least twice as fast as that."*
>
> Through the Looking Glass by Lewis Carroll, 1871

Looking from a very general perspective onto the recently concluded negotiations between the European Union and the ACP States on a successor agreement to the Lomé IV bis Convention that expired on February 29th, 2000, Lewis Carroll's famous quote seems to best describe the situation the ACP negotiating partners found themselves in. Faced with the immediate danger of the complete erosion of trade preferences enjoyed under the previous four Lomé agreements due to massive pressure from both EU hinting at WTO-ruling to liberalise trade relations with the EU, it took all the negotiating capacities, political skills and international support the ACP countries had at hand to even keep up to levels of trade preference enjoyed under the previous Lomé-conventions. Among civil society spectators there is little doubt that these negotiations were really about trade, not aid. And from the start of the negotiations in September 1998 on it had been quite obvious who of the negotiating partners is cutting the ground from under whose feet and who is running and stumbling to keep up with this pace. The negotiations were not between equal partners. Not in economic terms, and clearly not in terms of their political bargaining power. Despite the vision of a new development partnership the ACP were still begging for the crumbs falling off the table of the European nations.

This background paper summarises the recently concluded official negotiating process between the EU and the ACP countries and examines alternatives and various proposals presented by independent consultants and from within the NGO community. Material drawn upon includes the final text of the new framework agreement[1], official statements of the negotiating parties, minutes from informal meetings with the participation of both ACP and EU representatives, studies conducted by independent researchers and documents prepared by NGOs who monitored the negotiating process. Since the nature of future trade arrangements emerged as one of the most controversial issues during the negotiations so far this paper will concentrate on this issue and will only spotlight other areas of negotiations, such as civil society participation, good governance and financial instruments, where agreement had also proven to be difficult to achieve. There is a wealth of publications on future trade options available both from independent researchers and from representatives of the European NGO communities[2]. These will be referred to in the following text whenever appropriate.

[1] The text of the new Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States can be found at http://europa.eu.int/comm/development/document/acp_eu_agreement_en.htm

[2] A link collection including official documents and most background materials from various sources mentioned throughout the text is located on the joined WEED – terre des hommes EU-North-South-Policy homepage at http://www.weedbonn.org/eu . There an assessment of the new agreement can also be found.

## 2. Timetable of negotiations

This section provides an overview on the negotiating timetable between the EU and the ACP for a post-Lomé co-operation agreement until the signing ceremony in Mid-June 2000 in Cotonou, Benin, as well as dates of various NGO activities. During the negotiations meetings of the ACP-EU central negotiating groups (CNG) at the Ambassadorial level for a successor agreement of the Lomé Convention took place on a monthly basis, ad hoc meetings of the negotiating groups at expert level as often as twice a week.

Timetable of activities in the process of EU – ACP negotiations (as of June 2000)

| Date | Event | Location |
|---|---|---|
| 13.10.98 | Meeting of ACP Central Negotiating Group | Brussels |
| 14.10.98 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| 15.10.98 | EUFORIC debate on civil society participation in ACP-EU co-operation | |
| 01.11.98 | Installation of the incoming bureau of the ACP Council of Ministers | Brussels |
| 17.11. - 18.11.98 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| 27.11.98 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| December '98 | Bureau of the ACP Council of Ministers | Brussels |
| December '98 | ACP-EU Ministerial meeting | Brussels |
| 16.12.98 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| 01.02.99 | Installation of the bureau of the ACP Committee of Ambassadors | Brussels |
| 08.02. - 10.02.99 | 1st Joint ACP-EU Ministerial meeting | Dakar |
| 28.03. - 01.04.99 | 28th Session of the ACP-EU Joint Assembly | Strasbourg |
| March '99 | Bureau of the ACP Council of Ministers | Brussels |
| 13.04. - 14.04.99 | 1st Meeting of the ACP Working Group of Trade Experts | Brussels |
| 20.04. - 21.04.9999 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| 23.04. - 25.04.99 | terre des homme, WEED and KOSA-organised conference on the impact of EU policy on ACP countries | Bonn |
| April '99 | Preparation for the 69th session of the ACP Council of Ministers and the 24th session of the ACP-EU Council of Ministers | Brussels |
| May '99 | Bureau of the ACP Council of Ministers | Brussels |
| May '99 | 69th session of the ACP Council of Ministers and the 24th session of the ACP-EU Council of Ministers | |
| May '99 | Joint ACP-EU Ministerial meeting | |
| 05.05.99 | EUROSTEP / terre des hommes / WEED Meeting with EU & ACP representatives | Brussels |
| 18.05. - 19.05.99 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| 27.05.99 | INZET-hosted ACP-EU expert meeting on trade arrangements | Amsterdam |
| 31.05.99 | EUROSTEP / terre des hommes / WEED Meeting with EU & ACP representatives | Brussels |

| Date | Event | Location |
|---|---|---|
| 10.06. - 11.06.99 | Meeting of OAU Panel of Experts on trade | Addis Ababa |
| 16.06.99 | EUROSTEP meeting with Development Counsellors of the EU | Brussels |
| 18.06. - 19.06.99 | 2nd Meeting of the ACP Working Group of Trade Experts | Geneva |
| 23.06. - 24.06.99 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| 01.07.99 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| 12.07. - 17.07.99 | ACP Civil Society Forum meeting | Yaoundé |
| 13.07.99 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| 28.07. - 29.07.99 | 2nd Joint ACP-EU Ministerial meeting | Brussels |
| 13.09. - 17.09.99 | ACP Ministerial meeting on the Sugar Protocol | Swaziland |
| 16.09. - 17.09.99 | Strategy seminar of European NGOs and national platforms | Brussels |
| 16.09. - 17.09.99 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| 28.09.99 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| 07.10.99 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| October '99 | 2nd Summit of ACP Heads of State and Government possibly preceded by the Meeting of the ACP Council of Ministers | |
| 11.10. - 15.10.99 | 29th Session of the ACP-EU Joint Assembly | Bahamas |
| 19.10.99 | Troika Meeting of ACP Trade Ministers and EU Development Ministers | Brussels |
| 26.10.99 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| 07.11. – 11.11.99 | ACP Civil Society Forum | Douala |
| 11.11.99 | EU Development Council meeting | Brussels |
| 22.11. - 24.11.99 | Preparatory meeting of ACP Ministers | Dom. Repub. |
| 25.11. - 26.11.99 | 2nd Summit of ACP Heads of State and Government | Dom. Repub. |
| 27.11. - 28.11.99 | Meeting of EU-ACP Central Negotiating Group (Ambassadorial level) | Brussels |
| 06.12.99 | Preparatory meeting of ACP Ministers | Brussels |
| 07.12. - 08.12.99 | 3rd Joint ACP-EU Ministerial meeting | Brussels |
| 02.02. – 03.02.00 | 4th Joint ACP-EU Ministerial meeting | Brussels |
| 29.02.00 | EU requests WTO waiver for new agreement | Brussels |
| 20.03. – 23.03.00 | 30th Session of the ACP-EU Joint Assembly | Abuja |
| 19.06.00 | ACP Ministerial consultations | Cotonou |
| 20.06. – 21.06.00 | Meeting of the ACP Council of Ministers | Cotonou |
| 22.06.00 | Meeting of the ACP-EU Council of Ministers | Cotonou |
| 23.06.00 | Signing ceremony of the new partnership agreement | Cotonou |

## 3. The official process

### 3.1 Structure of the negotiations

Official negotiations between the ACP countries and the European Union were started in September 1998. They aimed to be completed by the end of 1999 with the formulation of a draft for the framework agreement but final agreement on some crucial issues was only reached at the beginning of February. The final text of the new agreement was finally published in April 2000. Expectations were for the ratification of a new leaner and technically more simplified framework agreement that describes the future ACP-EU partnership co-operation at the beginning of the new Millennium. Using the framework agreement as a basis more detailed negotiations on the implication of the general guidelines for political dialogue, development co-operation and economic co-operation will follow within the next five years (EU Commission 2000a; EU Commission/ ACP Group 1999c).

The actual negotiations were conducted within four joint ACP-EU thematic negotiating groups. Negotiations took place both at the ministerial level and the level of ACP ambassadors and European Commission civil servants. The four negotiation groups reflected the main thematic areas that the proposed future co-operation agreement should cover[3]:

1. Central Negotiating Group (CNG): This group dealt with the principles and objectives of the framework agreement; in particular the political dimension, the institutional framework and general provisions. In addition it served as the overarching negotiating group.
2. Private Sector Group: This group covered the private sector and investment-related issues. In addition it dealt with development strategies relating to growth, competitiveness, employment, capacity building, regional co-operation, gender, equality and participation and consultation of actors (including civil society).
3. Trade and Economic Group: The main focus was on all trade-related issues such as WTO compatibility, REPAs and other trade proposals, trade co-operation and development, competition policy, non-tariff barriers, trade in services and the future of the commodity protocols (including STABEX and SYSMIN).
4. Group on Instruments and Finance (DFC): This group worked on the 'logistics' of the agreement including the simplification of instruments and procedures, rolling programming, change in the nature of aid, efficient resource management and technical co-operation.

At the civil servant level the negotiating groups met at least monthly. Additionally ministerial meetings were scheduled at larger intervals. Furthermore meetings of technical experts both from the ACP Secretariat and the European Commission convened on demand, often as frequently as twice a week. Both parties assigned principal spokesmen for each working group to report to the ACP-EU Joint Committee of Ambassadors and the Joint Council of Ministers. The ACP also utilised the expertise of consultants from external organisations such as the OAU, the Commonwealth Secretariat, Caricom, the Caribbean Negotiating Machinery and independent research institutions. The decision-making structure of the EU-ACP co-operation agreement is summarised in Figure 1.

Negotiations at both levels were held behind closed doors. Both parties agreed to inform the public through reports that were released regularly after successive rounds of negotiations. In reality there was very little information available from the negotiating parties. While the European Commission's DG Development (formerly called DG VIII) posted very basic information of little informative value on its website[4], documentation from the ACP Secretariat had only been informally available upon request from civil society organisations. In addition some NGOs were granted observer status at the opening and closing sessions of the last ministerial negotiating meeting as well as at a press conference to inform the public on the results of the negotiations. Again the information available was of rather general nature. Both parties showed are clear deficiency in terms of achieving full transparency and openness of the negotiating process to the general public. co-operation

[3] ACP Secretariat: Structure and issues pertaining to ACP-EU negotiations, Brussels 1998. For the composition of the negotiating groups refer to the ACP Secretariat web-site under http://www.acpsec.org/gb/lome/future/negteame.htm.

[4] See http://europa.eu.int/comm/dg08/event/negociation_en.htm.

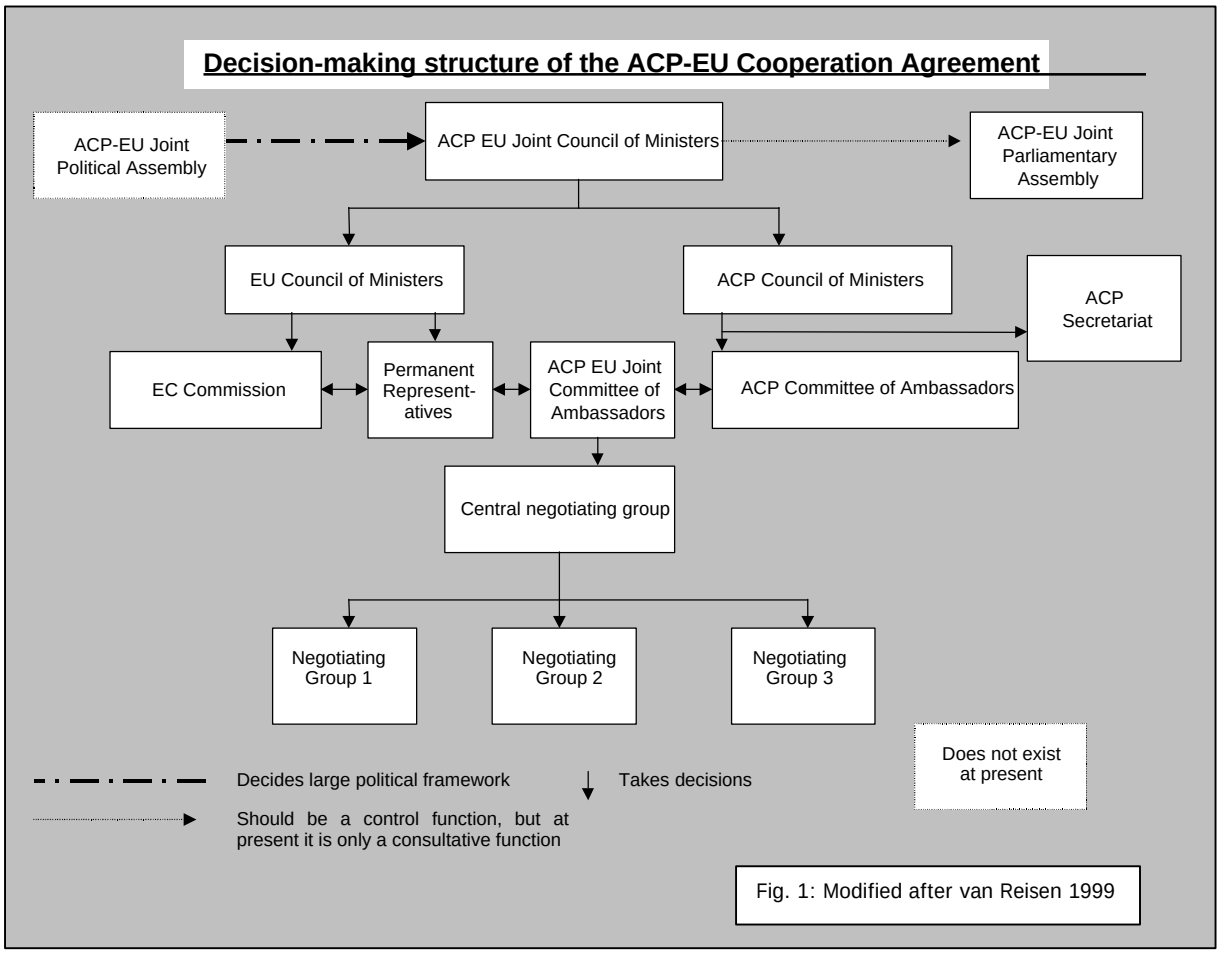


Fig. 1: Modified after van Reisen 1999

## 3.2 Drafting the agreement

In the end it took the negotiating parties one and a half-year to conclude on a new framework partnership agreement. During most of the time negotiations advanced rather slowly on a wide range of issues although the Commission repeatedly highlighted the progress achieved. At a hearing in July 1999 Mr. Lowe, Director General of the Commission's DG Development, stated that half of the new agreement had already been written and that most of the text would be ready for the ministerial negotiations meeting in December which was regarded as being the final round of negotiations.[5] Looking back this was clearly a very optimistic view and even misleading given that no major agreement has been reached at that time on most crucial issues such as trade and civil society involvement. These issues were among those finally settled late on Thursday February 3rd following the 4th and final ACP-EU ministerial meeting in early February. The following section will provide a short overview on topics of common understanding that were agreed upon earlier during the negotiations.

Concluding the Joint ACP-EU Ministerial meeting from February, 8th to 10th in Dakar, Senegal, the parties published a joint report on the state of the negotiations (EU Commission/ ACP Group 1999c). In this document, the EU and ACP listed both points of agreement and aspects that needed further development within the work of the four negotiating groups. A second joined report including the key

[5] For reference see statements of EU officials in several informal meetings with ACP and NGO representatives, e.g. R. Lowe in a IPS-organised hearing on 8-10 July in Brussels quoted in EUROSTEP Proactive File No.140, 9. July 1999, p.1.

sentences drafted so far was published after the 2nd Ministerial meeting at the end of July (EU Commission / ACP Group 1999f). After the 3rd Ministerial negotiating conference in Brussels, the EU published two press briefings on the content of the meeting[6] in addition to its regular information bulletins on the negotiation process. First let's look at what has already been agreed on in these documents, afterwards we will come back to the critical issues that have been focus of debate until the final compromise.

Following the 2nd Ministerial general agreement had been reached on the structure of the future agreement: It should be simpler, more readable and more accessible to the partners. The new partnership rests on three pillars, namely political dialogue, development co-operation and economic co-operation. It will concentrate on the eradication of poverty, be consistent with the principles of sustainable development and promote the integration of ACP countries into the global economy. In very general wording the parties agreed on equality, ownership of development strategies, broad participation, mutual dialogue, differentiation according to particular country characteristics and the need for a long-term development strategy as the fundamental principles that should guide a future partnership. During the 3rd Ministerial addition agreement was reached on the non-execution clause, dispute settlement and accession to the convention.

In the private sector group in Mid-1999 general agreement had been reached on the principles that should guide development strategies. Similar convergence of views was expressed on the elements of co-operation such as social policies, gender issues, sustainable development and regional integration. Some more room was given to the nature of the private sector development such as the creation of a favourable environment for investment (reforms on the macroeconomic, legal and administrative level as well as guarantee schemes), the promotion of public-private sector dialogue, institutional capacity building, partnership promotion between EU and ACP private sector operators, securing a viable financing system and the special attention to small-and-medium-enterprises (SMEs). In addition several sectorial and social policies, youth, gender and cultural issues were briefly dealt with. Restitution of cultural property was among the issues settled in December. Further work was still needed on the definition of the actors and their role in the programming process of the new partnership.

On trade co-operation serious disagreement between the partners was hidden behind more general and agreeable objectives for future trade relations. At the Ministerial in Dakar the parties expressed their commitment to „...foster the smooth and gradual integration of ACP countries into the world economy, thereby promoting their sustainable development" (EU Commission/ ACP Group 1999c). The framework convention should therefore include the principles and objectives of a future trade co-operation. To secure these objectives trading capacities of ACP countries should be strengthened, regional integration should be fostered as a means to gradually integrate ACP countries into the world economy and trade development measures should be elaborated upon. Additionally the intention to maintain special treatment to ACP LDCs and for the vulnerability of small, landlocked and island countries was expressed. At the Ministerial Conference in Dakar ACP and EU representatives „...recognised that present non-reciprocal trade preferences (referring to Lomé Convention regulations) could not be maintained indefinitely and that therefore keeping the status quo was a temporary measure for future ACP/EU co-operation, which should facilitate the transition to a new trade agreement". They further agreed „...to determine the objectives and principles of alternative trade arrangements including the EU's Regional Economic Partnership Agreements proposal (REPA) as well as other options such as the outcome of the review of the GSP" (EU Commission/ ACP Group 1999c). In subsequent meetings several trade issues such as market access, rules of origin, trade related issues (labour standards, trade in services) were settled).

On instruments and financing the parties broadly agreed on „...the main objectives, namely: consistency and harmonisation of instruments, flexible and coherent use of instruments and more rapid implementation procedures" (EU Commission / ACP Group 1999c). To a more practical end this included the rationalisation and simplification of instruments and access procedures as well as the creation of a private sector development and investment facility. There was certain disagreement on the nature of debt relief initiatives. This was settled in early December when the parties decided that, in line with the adoption of an enhanced debt initiative at the G7 summit in Cologne, unallocated resources from the 8th

[6] Press briefing #415 (Conseil/99/415) and #402 (Conseil/99/402), both available on the EU-website under http://europa.eu.int/comm/development/event/negociation_en.htm.

and older EDFs (currently amounting to more than 9.5 billion €) should be mobilised towards ACP countries that qualify under the HIPC initiative. Regarding resource programming the parties agreed upon the process to „... ensure predictability and security in resource flows while at the same time ensure flexibility to satisfy or tailor assistance to evolving or specific changing country circumstances and needs“ (EU Commission / ACP Group 1999c). They diverge however about the compulsory nature of the initial amount and the predictability of available programmable resources. Similar proposals diverge on the conditionality of resource allocation, its subsequent adjustability and the timing of the review of the indicative programmes.[7] It took the Commission until the 3rd Ministerial in Brussels to present the ACP with the financial resources that will become available under the 9th EDF. According to these figures, over the next 7 years (the period before the entry into force of next financial protocol) 13.5 billion € will be available. 10 billion are earmarked for long-term development co-operation, 1.3 billion to support regional co-operation and 2.2 billion € for a new investment facility to support private sector development. The allocation for the EIB was set at 1.7 billion €. Surprisingly there was no resistance from within the ACP group over the amount of the financial envelope (which is about three percent less, in real terms, than the amount allocated in the previous five years), probably because the EU promised to raise the rate of disbursement and to institute an extensive review on the programming process[8].

## 4. Controversial issues

Despite the consensus that had been achieved between the negotiating parties until Mid-1999 on a wealth of issues still some of the most important questions remained subject to pronounced controversy. Following the Ministerial meeting in July „..the Ministers were unable to resolve the points of disagreement relating to the essential elements, the non-execution clause and the accession criteria“ (EU Commission / ACP Group 1999f). The main critical areas that awaited consensus in the negotiating groups still included the nature of future trade co-operation, good governance, civil society participation and financial instruments. The final two Ministerial negotiation rounds, in December and February 2000 in Brussels, were accordingly characterised by extended dispute, mainly about two political issues: good governance and the migration clause on illegal immigrants. In addition trade was still high on the agenda. These will be dealt with in the following sections in closer detail. During the whole negotiation process independent experts and development NGOs that critically monitored the negotiations had, as part of their advocacy campaign on the future of Lomé, been very outspoken about the urgent need to address these issues given the pressing time-frame.[9]

### 4.1 Exploring trade options

In the negotiations on future trade arrangements widest differences surfaced between the negotiating parties. Although the subject had been matter of intense negotiations no agreement was achieved on the form in which future trade co-operation should be included in the framework agreement until early November 1999. In a so-called ‘non-paper’ published after an informal meeting between the Troika of ACP Trade Ministers and the Troika of EU Development Ministers[10], the parties outlined elements of the compromise on EU-ACP trade co-operation that formed the basis for the text of the agreement. Shortly

[7] While the EU is suggested a biannual review, the ACP countries voted for a mid-way review (EU Commission / ACP Group 1999c)

[8] Press release by the ACP secretariat on the conclusion of the successor agreement to the Lomé convention, accessible under http://www.oneworld.org/acpsec/gb/press/037900_e.htm

[9] E.g. open letter by EUROSTEP, NGDO-Liaison Committee, APRODEV, WIDE, CIDSE and EURODAD addressed to both the Commission and the EU Development Council dated 6th July 1999, and EUROSTEP’s „Proposals to the ACP negotiating Ambassadorial Spokesmen and EU member states representatives on the future ACP-EU framework agreement“ presented on 10th and 16th of June 1999 in Brussels.

[10] The ACP-Troika included the ministers from the countries that held the Presidency of the group, the country that previously held the presidency, and the next country to hold the Presidency.

before, the ACP side had expressed their doubts that the ACP and EU would at all be able to reach an agreement by February 2000.[11]

In its original Green Paper the European Commission described three possible scenarios for future trade arrangements, all of which were regarded as unsatisfactory (EU Commission 1997):

a) The retention of the status quo which was very likely to experience strong opposition among WTO members,

b) the complete abolition of specific trade preferences for ACP countries, which would have left them with the GSP as it currently stands or

c) the introduction of reciprocal trade arrangements, which were, according to the EU, more or less nonnegotiable because of the ACP partner's lack of capacity to negotiate them.

In subsequent negotiations the EU side clearly moved towards its proposal for „Regional Economic Partnership Agreements" (REPAs) to be negotiated between the EU and regional country groupings within the ACP within a transition period of 5 years. Countries unwilling or unable to join such REPAs would automatically be de-classified under the regular GSP or, in the case of Least Developed Countries (LDCs), under the Super-GSP. Under the later scenario at least all non-LDCs would have seen a major erosion of trade preferences with the EU.

In their mandate and the subsequent process the European Commission made very clear that they regarded their REPA proposal as the most viable trade option for a future Lomé framework agreement (EU Commission 1998). On many occasions EU officials repeatedly stated that, in the EU's view, there is no alternative trade regime to REPAs. The EU however was not going to superimpose REPAs on the ACP in a rigid time-frame but rather intended to put the ACP countries in the „driving seat" in the process of regional integration and preparation for multilateral trade[12]. The partners recognised the need for „...a preparatory period" during which „...present non-reciprocal trade preferences should be maintained for all the ACP" (EU Commission/ ACP Group 1999c). Strong disagreement arose on the length of the preparatory period within which the new trade co-operation should be implemented. According to the EU, it should last 5 years, but 10 years according to the wish of the ACP. Although in the official mandate the EU suggested a negotiating period of 5 years in which the proposed regional free trade agreements are to be finalised during the negotiations various EC officials informally admitted that the EU would be prepared for a longer negotiating period and a transitional period of even 15 years.

Finally, in the new framework, the EU and the ACP agreed that ACP countries or groups of countries, if they feel ready to do so, will negotiate WTO-compatible Economic Partnership Agreements (EPAs) with the EU. The EU committed itself to find alternative trade options for those countries that are unable to form EPAs within the projected timetable that provide levels of market access equal, in real terms, to the existing Lomé arrangements. Economic and trade co-operation will build on existing regional integration initiatives of ACP countries. The EPAs, as the EU sees them, will cover the progressive establishment of liberalised trading arrangements with the ACP states.

Since most of the actual negotiations took place behind closed doors it was quite difficult to assess to what extend concepts of possible alternative trade regimes were discussed among the parties. The following sections therefore are based on several independent research studies that explore in-depth possible alternatives to the (R)EPA arrangement. However, as the last-minute compromise showed, and regardless of how convincing and promising some of the scenarios may sound, their applicability and relevance to the negotiating process to a large extend depended on political will rather than on economic reason.

### 4.1.1 WTO compatibility – A paradigm?

It is still not clear how exactly a future trade agreement would have to look like to be „WTO-compatible". Even within the WTO there is no clear definition of what the phrases „other regulations of

[11] C. Greenidge quoted in EUROSTEP Proactive File No. 149, 1. October 1999.

[12] R. Lowe in a IPS-organised hearing on 8-10 July in Brussels quoted in EUROSTEP Proactive File No.140, 9. July 1999, p.1.

commerce“ and „substantially all the trade“ in GATT Article XXIV really cover. The later could equally relate to all existing trade or all tariff lines. An EU proposal to interpret it as to cover 80 percent of total trade has already been rejected by the WTO, one for a 90 percent criterion has been under revision (ECDPM 1998, as of December 1998). During the negotiations the EU has interpreted the concept of WTO compatibility to include the following key elements: About 90 percent of trade should be covered, no sector should be excluded and new arrangements should be set in place over a period of 10 to 12 years (ERO 2000).

During the whole negotiating process the EU side has used the argument of external pressure to negotiate WTO-compatible new trade arrangements to press for their proposal for Regional Economic Partnership Agreements (REPAs), but has constantly post-phoned to apply for a WTO-waiver despite repeated urges from the ACP group to take initiatives within the appropriate timeframe. Late November 1999 the ACP position received support for their position from an unexpected source. Miguel Rodriguez Mendoza, the Deputy Director of the WTO, on the occasion of his invitation to the 2nd ACP Summit in Santo Domingo, declared that there is no single WTO-rule that would make it compulsory to transform the Lomé preferential agreements into free trade agreements[13]. In addition, according to Mendoza, the WTO has never refused a request for a preferential treatment relating to the US Caribbean Basin Initiative (CBI) as one example. The only condition the WTO would require is to receive the request for an new waiver at least 90 days[14] in advance of the foreseen date of implementation of the preferential treatment. With less than 90 days left before the expiry of Lomé IV at that time the EU failed to apply within a suitable timeframe. It became early April before the EU finally applied for a new, 8 year waiver with the WTO.

The road to a new waiver seems to be bumpier than previously thought. Any future waiver may be challenged any time by WTO member states, most likely from one or more of those developing countries that would see a violation of their own economic interests. In the light of the ongoing banana dispute a group of Latin American countries including Honduras, Ecuador, Guatemala and Panama have strongly criticised a new waiver. Although the WTO dispute settlement body has voted against the current EU banana preferential trade regime trice, they fear that the EU might continue with this scheme under a new waiver. The WTO will decide on the requested EU-waiver at the beginning of July 2000. Panama and Ecuador already announced that they will delay the process until the EU conforms to WTO dispute settlement ruling. Clearly is only the tip of the iceberg and preferences granted under the other commodity protocols will soon come under WTO-scrutiny. Or as Winters, research economist at the World Bank, has put it (1998, p.14): „... for in my opinion WTO members will not back away from this fairly fundamental test of their ability to discipline violations of their rules.“ Whether this threatening gesture will come into life yet remains to be seen. It is however clear that none of the proposed options, REPAs or alternative trade arrangements for maintaining some sort of trade preferences for ACP countries alone, is a priori guaranteed to be WTO-acceptable.

### 4.1.2 The original REPA proposal

The REPA proposal as suggested by the EU proposed that in 2005, after a negotiating period of 5 years, and a subsequent transitional period of no longer than 10 years substantially all trade[15] would have to be freed of all tariffs. Thus by the year 2015 at the latest all ACP regions that entered into REPA negotiations with the EU would have experienced an unrestricted flow of goods.

Among the ACP countries the feeling prevailed that they still lacked a clear evaluation of the economic viability of the REPA proposal. In addition to REPA impact studies by the European Commission, undertaken in 1998, they therefore commissioned own studies on the possible impacts of REPAs on ACP countries. First results were published in June 1999 and will be evaluated further below (Working Group of ACP Experts 1999). Certainly some of the ACP regions, namely the Caribbean

[13] M.R. Mendoza quoted in EUROSTEP Proactive File No. 158, 3. December 1999
[14] Length of period within which the Council for Trade in Goods has to consider a request for a waiver and send a report to the WTO Ministerial Conference for decision by three-fourth vote of all members.
[15] Following the interpretation of the EU this means 90 percent of imports on both sides.

group[16], were more willing than others to consider the REPA option and its potential economic benefits because they might profit to a larger extend from free trade (ECDPM 1998). Also among the member states of the South Pacific Forum (including both ACP and non-ACP states) there are currently negotiations underway aiming at the creation of a regional free trade area. In general the anticipated negative effects of trade diversion, revenue losses and domestic constraints including weaknesses of administrative capacities were thought to outweigh the proposed benefits of trade creation from REPAs in most regions (McQueen 1999).

Opposition to the REPA proposal was strong within the ACP group. There were several well taken reasons why the ACP countries regarded REPAs as a non-viable option for the near future. The bottom line was the feeling of too much liberalisation too soon (ECDPM 1998):

- Regional integration among ACP countries has not progressed to a point from where these regions could be equal negotiation partners with the EU on free trade agreements.
- The ACP countries are by no means uniform in their economic interests. Rather they are characterised by a diversity of economic interests and diverging levels of national development.
- In most ACP countries the political capacity to implement free trade agreements with such a potent partner seems to be lacking.
- Given the rigid time-frame suggested by the EU for the inclusion of a trade option into the framework agreement ACP countries felt pressured into decisions they were not yet ready to take.
- The REPA proposal was not guaranteed to be WTO-acceptable under WTO Article XXIV.

The EU envisaged future REPAs with 6 regional ACP groups: CARICOM, EAC, SADC, UDEAC-CEMAC, UEMOA and the Pacific. Since these groups do not include all ACP countries, the question arose whether such REPAs would undermine rather than further the regional integration efforts of various ACP members? Additionally, the ACP criticised that the selection and constitution of the ACP regions could not be arbitrarily decided from the outside by the EU (Working Group of ACP Experts 1999). If the EU could not assure that there would be a single free trade agreement within every region than the proposal would work against regional integration in the ACP[17]. The definition of the regional groupings themselves and the question of their inclusiveness were also points of disagreement between the EU and the ACP. The six possible groups did not seem to have strong support within ACP countries. There was the strong fear among the ACP that they would be forced to divide into six (or more!) smaller groupings and loose what has been the core of the Lomé partnership (Working Group of ACP Experts 1999: p.14). The ACP further mentioned the need for the involvement of regional organisations such as the Organisation of African Unity (OAU) or the African Economic Community (AEC) in the determination of regional groupings for future REPA negotiations (ibid.: p.19). Later during the negotiations the EU stated that contrary to the ACP experts' report, decisions on the geographical configuration would be up to the ACP countries themselves (EU Commission 1999b).

In an effort to finally reach agreement on the trade issue, the negotiating parties finally formulated a compromise on future EU-ACP trade arrangements in November 1999[18]. The joint proposal for a compromise followed an informal meeting between the Troika of ACP Trade Ministers[19] and the Troika of EU Development Ministers in Brussels. The compromise, anticipating the final text of the framework agreement, contained the following points of agreement:

- The commitment to the conclusion of a new WTO-compatible trading arrangement between the parties after an agreed preparatory period.
- Commitment to remove progressively barriers to trade between both parties.
- The new trade co-operation should be build on regional integration initiatives of the ACP countries. The includes the conclusion of economic partnership agreements (EPAs) with

[16] The Carribean countries have strong trade relations to the USA and currently receive trade preferences under the Caribbean Basin Initiative (CBI) that may more than compensate potential benefits from future EU FTAs.
[17] E C. Greenidge in a IPS-organised hearing on 8-10 July in Brussels quoted in EUROSTEP Proactive File No.140, 9. July 1999, p.1.
[18] EU /ACP "Non-Paper on elements of a compromise on EU-ACP trade co-operation", November 1999.
[19] Minister from the countries currently holding the presidency of the ACP group, the country next to hold the presidency and the country that last hold the presidency).

individual ACP countries or groups of ACP countries who choose to do so. For countries that are not in a position to enter into EPAs, the EU will examine all alternative possibilities for a new trading framework which provides a level of market access which is equivalent to existing Lomé arrangements and in conformity with WTO rules.

- There will be initial preparations for the negotiation of new trading arrangements between the signing of the new framework agreement and its entry into force (or January, 1st 2002 which ever is the latest). Subsequently, negotiations are scheduled during a preparatory period of 6 years. In 2006, however, a joint review on the progress of these negotiations will be carried out to ensure that no further time is needed for negotiations. The new trading arrangements will enter into force by January 1st, 2008, unless an earlier date is agreed. They will comprise appropriate transition periods to liberalised trade conditions in conformity with WTO rules.
- Both during the preparatory and the implementation period of new trade arrangements, both parties will closely co-operate within the WTO to further their common interests which will include in particular: Access for products and services from ACP countries to EU markets, special and differential treatment (SDT) of developing countries (particularly LDCs), adequate transition periods for new trade agreements, the exclusion of sensitive products, and asymmetry in tariff dismantlement. For this purpose a joint EU-ACP Trade Panel will be established which will examine the impact of wider liberalisation initiatives on ACP-EU trade and make proposals to the ACP-EU Council with a view of preserving existing trade benefits.
- The parties will jointly request a waiver from the WTO for the continuation of existing preferences until the end of the formal preparatory period.

The compromise removed the prefix "Regional" from the planned trade arrangements but the Commission still stresses the importance of regional integration for the successful integration of the ACP countries into the world economy[20]. Besides there was no recognisable change to the REPA-concept free trade. WTO-compatibility still remained the paradigm for the new co-operation arrangements. Nevertheless the EU for the first time admitted that they would be prepared to request an 8-year waiver from the WTO. With respect to the modalities and procedures, interestingly enough three phrases were put into brackets by the Commission that later removed from the final text as agreed upon at the beginning of February. They comprise the following: 1. On the maintenance of non-reciprocal trade arrangements the EU originally included the option to further *improve* them during the preparatory period for all ACP countries. 2. Similarly, regarding the compatibility of new trade arrangements with WTO rules the originating benefits for ACP should not only be maintained but *improved*. 3. In a sentence that was later removed from the text the parties agreed on the need for enlarging access to the EU market for ACP commodities in general. This is an indication that the Commission in the end was neither willing nor prepared to substantially improve ACP preferences as compared to existing preference levels in the new convention.

On the future of the commodity protocols[21] there were no firm guarantees for their continuation from the EU during the negotiations. The parties stated „...the importance of the commodity protocols and the need to review some of them". They noted, however, „...a fundamental divergence of view between both sides on the nature and extent of this review including which protocols are to be reviewed" (EU Commission / ACP Group 1999c). The future of the protocols highlighted the controversy over trade preferences as a tool of development policy quite clearly. Given the importance the protocols had in the past for some ACP countries, and will continue to have after 2000[22], the negotiating parties were faced with the need to agree on a smooth process of transition towards the likely termination of

[20] EU Commission paper entitled "Objectives, Principles, Modalities and Procedures of ACP-EU Economic and Trade Co-operation" elaborating on the non-paper, November 1999.

[21] The preferences granted under these protocols for bananas, beef and veal, rum and sugar each have a different character. Although they are all threatened by trade liberalisation their future options have to be examined on a case-by-case basis. The protocols on bananas and beef and veal ceased together with the Lomé convention, the rum protocol will end by the year 2003, the sugar protocol is exceptional in that it is not legally linked to the Lomé convention and will be reviewed in 2001 (for a detailed discussion see Dunlop 1999).

[22] Exports of beef and veal, sugar, rum and bananas in 1998 represented about 9 percent of ACP total exports to the EU (with sugar having the largest share of 5 percent). This reflects a total export earning of more than 1.5 billion € (Dunlop 1999).

the protocols. The ACP position[23] simply called for a prolongation of the commodity protocols in an „enhanced" form because they had been a major source of foreign exchange earnings (ACP Group 1998). At other place the ACP suggested the possibility to create so-called „stand-alone arrangements" for the protocol products without being more explicit about the way these should be shaped to remain uncontested within the WTO (Working Group of ACP Experts 1999: p.31). Quite clearly this was a reduced and unrealistic view given the challenges the commodity protocols already faced (ECDPM 1999). The EU asserted that the protocols could remain under the REPAs without being more explicit about such an option (EU Council 1998). One of the crucial questions still is whether the protocol commodities can be included under „substantially all trade" sensu GATT Article XXIV or can (temporarily) be put on reserve lists of sensitive products as has happened in the new EU / South Africa Free Trade Agreement. The protocols on sugar, beef and veal are annexed to the new agreement with the view to revise them in the light of multilateral trade negotiations. It seems reasonable to assume that the EU would like to phase out the protocol preferences within the transitional period. This would necessitate at strong EU position within the WTO when the current waivers have to be renewed given the increased scrutiny the protocols currently from non-ACP member states.. The outcome of this scenario seems uncertain since interests of individual EU member states on the future of certain protocols may diverge and the EU position may be internally weakened[24]. The future of the commodity protocols therefore is, to a large extend, determined by external processes such as the outcomes of the WTO negotiations or the reform of the EU's Common Agricultural Policy.

### 4.1.3 How about alternative trade agreements?

The ACP side has not really been outspoken about the concrete nature of „alternative trade agreements" that could have contributed an realistic alternative to be included into the new framework agreement. The negotiating mandate of the ACP called for a 10-year transitional period keeping the status quo despite the problem of political feasibility given the likely resistance such a proposal would face in WTO-negotiations[25] (compare also 4.1.1). According to the ACP mandate negotiations for an alternative trade arrangement should have commenced in 2006 to become effective only in 2010.[26] The UK emphasised at the 2nd Ministerial meeting at the end of July 1999 that there was no chance of obtaining a 10-year waiver from the WTO and that this would be injurious for the promotion of investment (EU Commission 1999b).

It took the ACP until the ACP Council of Ministers meeting in Dakar in February 1999 to react to the EU proposal on REPAs and to establish the Working Group of ACP Trade Experts. The group was commissioned „to examine all the options pertaining to the adoption / pursuit of alternative trade arrangements" (Working Group of ACP Experts 1999). The terms of reference of the working group include to examine all possible options for alternative trade arrangements, the feasibility of Free Trade Areas (FTAs) with the EU, examine future implications for ACP LDCs and non-LDCs, consider alternatives

[23] Although there are only 29 protocol beneficiaries among the ACP, they quite successfully managed to line up the rest of the ACP countries for a homogenous position in favour of the continuation of the protocols. The Group even called for the creation of a new protocol on Rice.

[24] In the banana dispute Germany, Sweden and Finland opted for the abolishment of all quotas and the establishment of a higher then present customs duty, from which ACP countries would be except; Spain, France and Portugal (the banana producing countries in the EU) criticised this option as lacking a clear commitment to support ACP countries. The EU reassured the ACP that changes in the regime would be made in close co-ordination with the ACP side. The majority of EU member states favoured a new, tariff-only, system that is believed to be harmful to ACP's Caribbean banana producers (EUROSTEP Proactive File No.139, 2. July 1999, p.2, No.143, 30 July 1999, p.1 and No.147, 17.September 1999, p.2).

[25] Voices had been raised within the ACP that called for an even longer transition period, e.g. 24 years (F.O. Fajana, OAU, at an expert meeting in Amsterdam on 27. Mai 1999) or even more than 30 years (Working Group of ACP Experts 1999). This wish expressed the ACP's objective to retain the *status quo* in trade preferences as long as possible.

[26] In a meeting of the two co-chairmen of working group 3 on 30. July the ACP side stated its willingness to bring the start of negotiations forward to 2005 (with a rendezvous-clause for 2008) rather than 2006 as currently proposed (EU Commission 1999b).

for the continuation of non-reciprocal trade preferences without the introduction of FTAs and to propose alternative trade regimes at the ACP regional level.

Regrettably the first report of the Working Group of ACP Experts issued in June 1999 did not add much to the search for alternative trade options. In addition to pointing out some of the weaknesses of the REPA and GSP proposals that have been criticised before, the round of experts seemed reluctant in their recommendations for future trade arrangements. A possible merger of current Lomé preferences with the GSP was mentioned as one of the possible options (ibid: p.29). Again this was not a new option that had been put on the table before. Alternatively to the EU REPA-proposal, other voices from within the ACP called for longer transition periods and the exclusion of more „sensitive" products to create so-called „soft REPAs" (ECDPM 1998). In that case a longer transition period would have allowed reasonable time for adjustment to the new trade regime, and would have taken into account the complexity of negotiations both at the EU and the WTO-level (Working Group of ACP Experts: p.33). The ACP experts additionally did not rule out a sui generis ACP-EU trade arrangement without further elaborating on the details of this proposal.

Instead the Working Group of ACP Experts expressed their reservation on a hasty decision for a future trade arrangement: „It does not follow that within the those objectives and principles [of the framework agreement] the ACP must exercise a definitive option on Alternative Trade Arrangements and it did not agree at Dakar to do so" (quoted in ibid: p.36). The ACP group admitted that they had never contemplated to argue for any alternative trade option within the time-frame of negotiations for a new framework agreement given the unclear outcome of multilateral developments in the WTO, the reform of the Common Agricultural Policy (CAP), the review of the GSP or the EU-enlargement. In lieu with the ACP mandate the Working Group of ACP Experts felt that the broad principles and objectives of future ACP-EU trade arrangements had already been defined (e.g. EU Commission/ ACP Group 1999c). Subsequently the ACP experts expressed their fear that the EU, with the view of adopting a framework agreement that would have committed the ACP to far larger areas of technical specificity regarding trade arrangements than previously contemplated, was pressing an unrealistic timetable (Working Group of ACP Experts 1999: p.37).[27]

The ACP experts further raised their concerns about the possible EU's intention to conclude the framework agreement by the end of this year including a clear decision on one of the alternative trade options they proposed (ibid.: p.38). It was in the clear intention of the ACP group to defer such decisions into the preparatory period after February 2000. The ACP Experts in their report made very clear that the ongoing discussions were preliminary examinations of alternative trade models that would have to be discussed during the roll-over period. „We strongly advise that the framework agreement should go no further than setting out, without being exhaustive, some of the options broadly stated that might be the subject of negotiations in the transition period. It will provide a menu of possibilities" (ibid.: p.39). At the end of July 1999 they concluded in recommending to the ACP group at the 2nd Ministerial Negotiating Session not to agree on any alternative trade arrangement, and to defer this decision to the transitional period without foreclosing any of the options in advance (ibid.: p.47).

Given the considerable divergence of the parties the second EU/ACP Ministerial negotiating conference in Brussels did not lead to any practical progress in the working group on economic and trade co-operation.[28] Although both parties „...recognised the urgency of arriving at final proposals for the agreement on trade issues as soon as possible in the autumn" (EU Commission / ACP Group 1999f) EU and ACP positions still diverged substantially at the issues discussed above. Most interestingly both the UK and the Netherlands, contrary to the common EU negotiating directives, had questioned the feasibility of the REPA proposal (EU Commission 1999b).[29] The Commission in its own evaluation on the

[27] According to the concluding remarks of the EU spokesman in the Ambassadorial Negotiating Session in Group 3 on 24th March 1999 turning the debate back on the REPA proposal „...should allow us to agree on the objectives and principles of the future trade arrangement in our session in June and to present our conclusions to Ministers in the July meeting. We will have to speed up in the remaining months to agree on the details of the approach chosen and on our future co-operation in trade related areas" (EU speaking notes quoted after: Working Group of ACP Experts 1999: p.37).

[28] The Commission entitled its conference conclusions „All in all a disappointing conference" (EU Commission 1999b).

[29] While the UK believed that REPAs would not be feasible for all ACP countries, the Netherlands expressed its doubts based on the results of the impact studies showing that REPAs would result in trade deflections rather than

trade negotiations in Brussels stated that „indeed some ground had been lost compared to the Dakar conclusions, although both parties agreed that these conclusions should be the starting point for the continuation of the negotiations“ (EU Commission 1999b). This view was reinforced b the ACP group basing its position on trade co-operation entirely on the report of the ACP Working Group of Trade Experts and not on the outcomes of the Dakar meeting. At that time it was all but clear how these differences could be resolved in the remaining month. The Commission declared that a new EU trade proposal had been drawn up that took account of the ACP position[30].

### 4.1.4 GSP and its improvement[31]

By then the EU had indicated that for ACP countries unwilling or unable to join into REPAs with the EU it would provide trade preferences within the EU's current GSP. According to the ACP negotiating mandate the GSP as it stands was not attractive[32] because it is less generous than Lomé preferences and involves many restrictions (ACP Group 1998). In particular, it seemed unacceptable to the ACP because it is non-contractual, unilaterally determined by the EU donor, lacks the Lomé stability and predictability and offers narrower product coverage and margins of preferences than the Lomé convention. Duty-free exports would only be possible for 68 percent of all exports as compared to 90 percent under the Lomé agreement (excluding the commodity protocols). In a report the ACP experts refreshed the notion that the current GSP and the proposed "Super-GSP" for LDCs were inferior trade options „...not worthy of any consideration“ (Working Group of ACP Experts 1999: p.45).

A study by Stevens et al. (1998) suggested that an improved GSP, though politically controversial and difficult to implement, might secure Lomé-like preferences to ACP countries and therefore be a valid alternative to REPAs. Since the GSP is autonomous and unilaterally granted by the EU the move towards such an improvement at the time of the next review of the GSP in 2004 would be possible, but solely be in the responsibility of the EU.

The most important problem to be solved when introducing an improved GSP would be to bindingly offer zero tariffs for all ACP exports into the EU. If this could be achieved than the autonomous nature of the GSP should be changed into a contractual one to offer long-term economic security to ACP countries. Additionally a dispute settlement body to assist ACP countries could be introduced and rules of origin (ROOs) would need to be improved to Lomé-level since GSP rules of origin are less favourable than Lomé options (especially regarding clothing and fish). GSP preferences were less favourable for 15 percent of ACP products as compared to Lomé IV rulings. According to the ACP the purpose of improved rules of origin was to maintain the differentiation between beneficiaries (the ACP states) and non-beneficiaries (other developing countries) in EU imports (Working Group of ACP Experts 1999). Rules of origin should not at all be used by the EU as non-tariff barriers to preferential imports from ACP countries.

A general problem in improving the GSP solely for ACP countries was the need to introduce sub-arrangements in the current GSP which would make the GSP even more complex. The current GSP however is already riddled with gradations that accumulated over time and made for an already complex agreement. Therefore it remained doubtful whether at all there would have been the political will within the EU to opt for a further complexity of the GSP. Technically, however, it would have been quite easy to offer zero rates to ACP producers by introducing 5 different tranches (Stevens et al. 1998):

- Lower tariffs on products where the ACP was the only supplier
- Offer equivalence to Andean/Central American States

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in trade increase. 8 other member states thereupon reaffirmed their attachment to the EU negotiating position on trade co-operation (EU Commission 1999b).

[30] EUROSTEP Proactive File No.144, 6. August 1999, p.2.

[31] During the negotiations this had been advocated especially by the UK as a possible alternative option that would guarantee that access to EU markets would not deteriorate as compared to the present levels enjoyed under Lomé IV. This view somewhat put the UK in opposition to the official EU negotiating directives. The Commission, during the 2nd Ministerial conference in Brussels, declared that „...contrary to what was said by the UK, a decision to accord equal treatment to the whole ACP group could not be legally binding because it would be hostage to developments in WTO rules; it would be a political undertaking“ (EU Commission 1999b).

[32] EU-ACP Negotiation Information Memo 6, http://www.europa.eu.int/comm/dg08/event/negociations4_en.htm

- Offer larger preferences to micro-trading states
- Extend market share graduations where ACP had smaller market share than non-ACP developing countries
- Take vulnerability of countries into account[33]

The improvement of the GSP would have additionally served as a safety-net for such ACP countries that would not have been able to enter into REPAs with the EU. According to the ACP experts, taking into account several criteria in a composite index could have produced an acceptable system to positively discriminate ACP non-LDC countries (recognising that this index would not have allowed indefinite differentiation).[34] Since it still would have discriminated non-ACP developing countries from ACP developing countries much like Lomé it was however doubtful whether this proposal would have withstood scrutiny within the WTO. Brazil's challenge of the special treatment of the Andean and Central American countries under the current GSP already hinted in this direction. Furthermore, a preferential treatment of ACP countries would not have been compatible with the EU's own promise to provide duty free access to all LDC's by the year 2000. In the long run, however, given the necessary political will in the EU, an improved GSP could have been a first step towards a contractual GSP open to all countries regardless of their historical past.

### 4.1.5 Most-Favoured-Nation treatment as solution?

The EU has always stressed the importance of trade benefits that would accrue to ACP partners when gaining tariff-free access to the EU markets under a regional free trade regime (under REPAs). Neoliberal economists at the World Bank's Development Research Group, however, have argued that for several reasons the resulting benefits may not be as principal for ACP countries as believed within the EU (e.g. Winters 1998; compare also Yeats 1998):

a) EU Most-Favoured-Nation (MFN) tariffs for industrialised goods and non-agricultural primaries are on average 1.5 to 4.5 percent higher than GSP tariffs, but the GSP involves certain non-tariff restrictions such as rules of origin or quantitative restraints that might make up for this difference in the future.
b) Although there is currently no quantitative limit, FTAs may contain certain restrictions in the future.
c) When negotiating similar agreements the EU, in the past, has insisted to exclude sensitive areas such as agricultural products or fish to the disadvantage of ACP countries whose economies heavily rely on such commodities.
d) Competition among producers in several FTAs might lead to a downward spiralling of prices. Only exporters that will be able to increase their supply capacities will be able to profit from such as scenario which might be difficult for most ACP countries.
e) Clearly the EU would gain more from any FTAs than the ACP countries for it will have additionally duty-free access to all other EU FTA partners that ACP countries will not be able to use.

According to the World Bank's economists the developing countries are best advised to „...de-emphasise the GSP". They state that for a new WTO round „...achieving further trade liberalisation across the board is the paramount issue from the perspective of developing countries" (Krueger 1999: p.2). To comply with this goal hey suggest for the EU to adopt a multilateral strategy of non-disruptive dismantling of Lomé preferences in the next WTO round. This would include a reduction of MFN tariffs on commodities relevant for ACP countries that have been sensitive for the EU and therefore protected in the past (Winters 1998). A reduction of MFN tariffs, similar to the one proposed for the EU, would be

[33] In a Joint ACP-EU analysis on the GSP a vulnerability index as criterion for differentiation is regarded as too difficult to establish and incorporate into the WTO (EU Commission / ACP Group 1999d).
[34] Suggested suitable criteria included the concentration of commodity exports, the vulnerability of small and landlocked countries as measured in an vulnerability index, infant industries, social and political stability index, share of manufactured goods in total exports, less than 0.03 percent share of world trade and index of population pressure (Working Group of ACP Experts 1999).

required from the ACP countries at the same time.[35] Possible benefits might accrue to all sides: The EU would improve its access to ACP markets and overcome the issue of WTO-compatibility, the ACP would profit from MFN tariffs offering more secure than current Lomé preferences, and even „the USA would break open the ACP economies to its own commerce" (Winters 1998). Additionally multilateral opening of markets could put an end to the logistic nightmare of past Lomé conventions, take pressure off the ACP's civil sector and free them from the periodic uncertainty of further EU negotiations.[36]

Quite clearly this and similar 'neoliberal' proposals aim at a complete liberalisation and integration of ACP countries into the global economy using MFN treatment (the least profitable of WTO preferences) quite likely at the greater net benefit of the stronger trading partners in the North. This multilateral „end-of-season sale" could well break the neck of the ACP economies since they would have to pay most of the adjustment costs. And, implicitly expressed, there would be no alternative option left that could provide a safety net for ACP countries in case of failure of multilateral integration. The ACP therefore has repeatedly, and quite clearly, stated that MFN can be dismissed as a non-viable option. On the EU side this option has not been considered.

### 4.1.6 The Future of STABEX and SYSMIN

While both EU and ACP agreed on the importance STABEX (EU's compensatory finance scheme to stabilise export earnings) had to remedy the harmful effects of instability of export earnings they disagreed on the future implementation. The ACP clearly wanted to maintain the schemes as they were while the EU proposed to include more general provisions in the new framework that would provide additional support in the case of fluctuations in export earnings. The ACP position was„...to maintain and improve STABEX as a separate and quick disbursing instrument" and they believed„...that STABEX should not be lumped under a long-term development strategy and should therefore be retained in its original design, to mitigate the adverse effects of instability of export earnings associated with agricultural commodities" (ibid.). The EU on the contrary stated „...that supplementary financial resources from a grant facility should be used to address the objectives related to loss in export earnings, sector reforms, economic diversification and macro-economic reforms" (EU Commission / ACP Group 1999c).

The assessment of the overall success of STABEX varies to a great deal. According to some authors, STABEX was an exemplary for successful North-South co-operation that has proven to guarantee compensatory financing to remedy the instability of export earnings under relatively low conditionality. They suggested to develop the system into a „guarantee fund" similar to a proposal by the European Commission in 1995 (Koehler 1997). On the other hand, there has been strong criticism against the success of these instruments in the past. In detail, opponents argue that the beneficiaries only belonged to a small group of countries, that compensatory payments provide a disincentive for export diversification and rather helped to cement the dependencies on few export commodities. Furthermore, they criticise the highly clumsy and bureaucratic nature of these instrument. The EU is still lacking a new proposal for the stabilisation of agricultural revenues that they agreed to produce after the Dakar conference.[37] During a meeting of the co-chairmen of working group 3 the ACP side declared that a new strategy paper dealing with STABEX and SYSMIN would be sent out after the meeting of ACP Ministers responsible for mining (EU Commission 1999b). It is not known whether this has been done.

On the future of the SYSMIN financing scheme the positions of the parties diverged to a similar degree. While the EU only feels committed to „...support the mining sector within the framework of

[35] In practice the multilateral approach suggested a transition period for ACP countries to liberalise protected sectors of 10 or even 15 years and a two-step process on the EU side: At first, the EU might obtain another 4 or 5 year waiver from the WTO for the continuation of Lomé preferences. During this time the EU would have to modify its GSP so that switching ACP countries to GSP tariffs would not entail substantial tariff increases for the later. In a second phase, the EU would have to decrease MFN tariffs so that they converge with GSP rates. This would have, at least in theory, allowed for ACP countries to switch to MFN tariffs after a sufficient transition period without experiencing high tariff increases (Winters 1998).

[36] L. Winters in an article in The Economist, April 24th 1999, p.80/85.

[37] EUROSTEP Proactive File No.144, 6. August 1999, p.2.

indicative programmes... without obligatory allocations to the mining sector“ the ACP proposed „...to transform SYSMIN into a more complete and effective tool that will take due account of the challenges of mining development, including its environmental aspects“ (EU Commission / ACP Group 1999c).

During the whole negotiations there seemed to be little willingness from the EU to continue with both finance schemes as they stood. Contrary, the ACP, in part being largely dependent on world commodity prices, were still calling to maintain and further strengthen these instruments (and SYSMIN in particular). Following the Ministerial meeting at the beginning of December 1999 it was agreed that the export revenue stabilising instruments STABEX and SYSMIN would be dismantled as separate instruments. They were summarised in one article on support in cases of short-term fluctuations in export earnings. Both parties recognised that "...instability of export earnings, particularly in the agricultural and mining sectors, may adversely affect the development of the ACP States and jeopardise the attainment of their development requirements" (EU Commission 2000a). The criteria for access to support for export revenue losses will depend on the extend to which export revenues in the mining and agricultural sectors have dipped. The new regulations replacing the old instruments have been one of the most intractable areas of the negotiations and the fact that the parties reached a consensus signalled how far the two sides have travelled since July[38].

### 4.2 Is there room to change WTO rules?

Certainly this cannot be fully discussed here given the uncertain future of ongoing WTO negotiations. Looking back, the EU has used the argument of WTO-compatibility of new trade agreements throughout the negotiating process to exert pressure on the ACP to accept the REPA proposal. The final trade compromise, first outlined in the non-paper on trade co-operation in October 1999, stated that a Joint EU-ACP Trade Panel would be established that would, inter alia, pay special attention to the ongoing multilateral negotiations and recommend joint actions to the Joint Council of Ministers. The parties further noted "...the importance to closely co-operate and collaborate in the WTO with a view to defending the arrangements reached in particular with regard to the degree of flexibility available".[39]

Various actors have called upon both parties for a joined action to push for a reform of WTO rulings on GATT Article XXIV. If they would join front, the EU and ACP would have 70 out of 132 votes (or 53 percent) within the WTO.[40] A future waiver would require the support of three-quarters of all member states (or an additional 29 states). The extend of the EU commitment to influence WTO-ruling in the interest of ACP and other developing countries however remains unclear. The EU and ACP might face serious opposition from countries like Australia, Hong Kong, Japan and Korea that are known to push for tighter rules within the WTO's Committee on Regional Trade Agreements (e.g. Croome 1998: p.34). Therefore, there should be serious doubt onto whether the EU will be willing to push for further trade preferences for (non-LDC) ACP countries after the failure of the WTO round in Seattle. At least in the joint reports the parties' appeal „...on the need for the WTO to be more flexible and more appreciative of the difficulties faced by ACP countries in meeting their obligations and on the need for technical assistance to enable the ACP to implement their commitments“ and „...the importance of the parties to closely co-operate and collaborate in the WTO with a view to defending the arrangement reached“ sounded little convincing (EU Commission / ACP Group 1999c). Meanwhile, however, Pascal Lamy, EU Trade Commissioner, explained that the reform of the WTO is now a major rather than a minor issue for the Commission.[41]

In a meeting with representatives of civil society organisations on 22nd, June 1999, members of European Parliament and the member states the European Commission extended the offer to members

[38] Press release by the ACP General Secretariat on the Special Session of the ACP-EU Council of Ministers and the 3rd ACP-U Ministerial Negotiating Conference.
[39] EU Commission paper entitled "Objectives, Principles, Modalities and Procedures of ACP-EU Economic and Trade Co-operation" elaborating on the non-paper, November 1999.
[40] There is a slight complication in that only 55 out of 71 ACP countries are currently members of the WTO. If non-member countries would apply they would nevertheless almost immediately gain observer status.
[41] P. Lamy at the Commission's first general meeting with European civil society organisations since the Seattle WTO Ministerial (EUROSTEP Proactive File No.177, 21. April 2000, p.1).

of civil society to present their position on the next WTO round. According to Sir Leon Brittan, former EU Commissioner for Trade, the EU however would support developing countries only to achieve a higher market access and help to implement WTO rules in developing countries. In his words, serious attention would be given to the failure of achieving coherence between development policy and the Common Agricultural Policy (CAP). However no commitment had been made to actually challenge WTO policies as they relate to developing countries[42]. During the whole negotiating process NGOs have continued to call upon the EU to finally request a new waiver from the WTO as soon as possible to temporarily preserve current trade arrangements in case both partners fail to complete negotiations before February 2000.[43]

Clearly the ACP should not rely on the EU but strive for an own political position in the WTO. The new Secretary-General Mr. Jean-Robert Goulongana has stated that, following the conclusion of the new EU-ACP agreement, the ACP group will seek to reinforce their co-ordination ahead of WTO and UN meetings. The ACP governments plan to provide the group's secretariat with more important executive functions in the future that would allow the Secretary-General to speak on behalf of the ACP group at international meetings[44].

Since the official EU mandate has been, and the EU position continues to be, quite strict about WTO-compatibility of new trade arrangements, the EU backing for the ACP within the WTO may not be as strong as needed, given that interests of individual member states may vary to a great deal (ECDPM 1998). In a communication paper from the EU Commission on a possible EU agenda for the next WTO round, issued prior to Seattle, the Commission, however, stated on the question of tariff preferences that „during the round developed country members should also seek to provide, on an autonomous basis, significant margins of (non-reciprocal) preference in favour of developing countries in all product areas of particular export interest for these countries" (EU Commission 1999a). It has been within the objective of the ACP group to target the amendment of WTO rules on the Enabling Clause and GATT Article XXIV on free trade arrangements to allow for greater flexibility towards developing countries (Working Group of ACP Experts 1999: p.40).[45] The ACP countries should ensure that this proposal will be put on the agenda of future Multilateral Trade Negotiations.

At the end of the July 1999 meeting, the ACP/EU Joint Council of Ministers already underlined its intention to address the economic and social constraints developing countries face in the new WTO round. Among other issues, the Council called for a WTO guarantee access to zero duties on their members respective markets for all products originating from LDCs.[46] The EU committed itself to assist the ACP countries within the upcoming WTO-negotiations by granting over 128 Million € from unused resources of the 7th EDF for ACP inclusion into the multilateral trade system over the next five years. Funds can be requested by individual states or by groups of states. 1 Mill. € was granted in September to establish a permanent ACP secretariat in Geneva to co-ordinate the ACP position at the WTO, an institution that European NGOs have called for for a long time. In addition the money will be used to hold seminars on the development of WTO negotiations, to provide technical assistance in the negotiations and support capacity building within ACP countries. To what extend the EU will be prepared to support the ACP countries' interests within future WTO negotiations still remains to be seen.

### 4.3 Political dialogue - Good governance

From the beginning of negotiations on the EU has been strongly pushing for the concept of good governance as an essential part of a new political dialogue to be enshrined in the framework convention. In Dakar, agreement could only be reached on the continuation of the discussions about the inclusion of good governance as one of the essential elements (EU Commission/ ACP Group 1999c). Let's take a brief look at how this issue had been dealt with in the final report of the private sector group for the Dakar

[42] EUROSTEP Proactive File No.138, 25. June 1999, p.1-2.
[43] EUROSTEP Proactive File No. 149, 1. October 1999, p.1.
[44] EUROSTEP Proactive File No.172, 17. March 2000, p.1.
[45] Proposals for ACP targets within the WTO included the amendment of the Enabling Clause to provide for preferential trade arrangements and a flexibility provision for developing countries in GATT Article XXIV for non-reciprocal trade as already expressed in GATT Article XXXIV (8) (Working Group of ACP Experts 1999: p.40-41).
[46] EUROSTEP Proactive File No.143, 30. July 1999, p.1.

meeting: The parties only agreed to „...concentrate on better governance through accountable political institutions, efficient administration and budgets reflecting consistent long-term development priorities“ (EU Commission/ ACP Group 1999c). They slightly rephrased this commitment in the section on institutional development and capacity building in the draft key sentences of working group 2: „Ensure transparent and accountable governance and administration in all public institutions“ (EU Commission / ACP Group 1999e). The stumbling block in the negotiations laid in the implementation of the non-execution clause (EU Commission 1999b).
A common definition of good governance was still lacking at the beginning of the July Ministerial meeting. The actual definition of the main components was planned to be phrased in a joint document that was to be presented to the Ministerial conference at the end of July 1999[47]. During the Ministerial meeting in Brussels the EU put forward their own proposal for a definition of good governance which, according to EU wishes, should be integrated with the formulation of the non-execution clause.[48] Yet the ACP still considered the existing essential elements of the convention as already including key elements of the concept of good governance and therefore did not see the need to include it as additional element. The ACP has been working on its own proposal for a definition (EU Commission / ACP Group 1999f). No agreement was reached on this matter and on the related reform of the non-execution clause at the Ministerial meeting in July.[49]

On the side of ACP states, the concept of good governance is quite clearly regarded as an intrusion on the sovereign rights of national decision-making and as introduction of a new form of conditionality in development co-operation. According to Carl Greenidge, Deputy Secretary-General of the ACP Secretariat, the EU would have got a more positive result from the ACP if they would finally have admitted that they were pushing for good governance as a tool to fight corruption[50]. He feared that the concept of good governance could serve as a device for non-transparent leverage against ACP countries.[51] There is some evidence substantiating this belief. Already in May 1999 the Commission presented a proposal on a strategy for the suspension of aid to ACP countries involved in armed conflicts, undermining the human and economic development objectives of the Convention[52]. In the past however the EU has been rather reluctant in suspending co-operation with ACP countries in cases of human rights violations, corruption or mismanagement.[53] According to informal wordings from EU representatives however good governance seemed to be a welcome lever to introduce stronger conditionality in future aid co-operation. For the ACP side, therefore, there did not seem to be a strong incentive to make good governance an essential element of a new framework agreement.

The final compromise did not include good governance among the essential elements (respect for human rights, democratic principles and the rule of law) but attached it as a fundamental element of the partnership, subject to regular dialogue. It is defined as "...the transparent and accountable management of human, natural, economic and financial resources for the purpose of equitable and sustainable development (EU Commission 2000a). Only serious cases of corruption (which remain to be defined) will be constitute a violation of this element. Since the ACP countries feared that the conditionality of good governance could be used to suspend co-operation, the parties introduced a new consultation procedure into the framework agreement which regards suspension as measure of last resort (ibid.). The EU regards this regulation as a "real innovation, both in the EU-ACP context and in international relations" (EU Commission 2000b). The EU is quite frank in its intention stating that "...this procedure will be applied not only in cases of corruption involving EDF money but also more widely, in

[47] EU-ACP Negotiation Information Memo 6, http://europa.eu.int/comm/dg08/event/negociations4_en.htm.
[48] Annexed to the conclusions of the Central Negotiating Group after the Brussels meeting were two draft formulations of what the non-execution clause could look like: The joined ACP-EU draft disagreed on the length of the consultation period following a violation of the obligations of the agreement and on the action to be taken in cases of special urgency (the definition of which was also debated) (EU Commission / ACP Group 1999f).
[49] EUROSTEP Proactive File No.144, 6. August 1999, p.1.
[50] C. Greenidge in an IPS-organised hearing on 8-10 July in Brussels quoted in EUROSTEP Proactive File No.140, 9. July 1999, p.1.
[51] C. Greenidge during a NGO seminar from 16. - 17. September in Brussels, quoted in EUROSTEP Proactive File No.147, 17. September 1999, p.1.
[52] quoted in :EUROSTEP Proactive File No.134, 21. May 1999, p.1.
[53] e.g. in the case of Nigeria, Sudan, Somalia or Niger.

any country where the EC is financially involved and where corruption constitutes an obstacle to development. It is thus not confined to EC activities" (ibid.). Carl Greenidge, in an interview commenting the new agreement, remarked that the ACP was not favouring the inclusion as essential element since this would have automatically attract sanctions. Additionally the ACP felt that many areas mentioned were already covered by the other essential elements. He pointed to the lack of capacity of many ACP governments in dealing with corruption and bribery and suggested to rather support the capacity of ACP governments to fight corruption and accept their responsibility for combating it.[54]

### 4.4 NGO involvement and civil society participation

This has been another of the difficult and controversial issues throughout the negotiating process. Although both parties agreed on the need of enhanced civil society participation and the involvement of non-governmental players the actual implications were far more controversial. As with other debatable issues discussions on this topic were constantly postponed. Both parties agreed that enhanced civil society participation would not be possible without adequate capacity building (both parties spoke about the creation of a „culture of dialogue"). But interestingly enough, only the EU side called upon the allocation of resources specifically targeting the non-governmental sector (EU Commission / ACP Group 1999c). At a meeting between NGO representatives and members of the EU Commission, the Commission raised several concerns regarding civil society participation. These issues included the danger of over-institutionalising civil society, over-assigning too much responsibility in this process to the European side that would raise problems with the ownership perceived in ACP countries and existing institutional deficiencies at the interface between EU delegations in ACP countries and the civil society[55].

During several informal meetings over the summer of 1999, ACP representatives uttered voices of caution regarding civil society participation in the programming process of a future framework agreement. Civil society should clearly understand its role (and limitations!) and respect areas of governmental responsibility[56]. In more general terms a clear definition of civil society would be needed before one could think about issues of participation[57] (admitting that this process would be easier in some ACP countries than in others). Accordingly the ACP countries seemed to be rather restrictive in their policy to open up to participation of NGOs in the decision-making process. These statements reflected the more general anxiety that NGOs and other civil society actors would eventually gain access to or control over the programming process at the expense of the official position of the ACP negotiating party. Primarily, ACP countries were sceptical about the political influence that Northern NGOs already seemed to have on their governments (regardless of this being a reality or not). Secondly, there seemed to be a more general concern regarding the political empowerment of NGOs within the ACP countries. NGOs, both in the North and the South, would have to accept that the state is still in the decision role and therefore cannot delegate decisions that clearly fall under it's own sovereignty[58]. NGOs should therefore work to strengthen the role of the state in the ACP countries. During the negotiations there was, however, not a common ACP position on the degree of civil society participation. Some ACP representatives stressed that NGOs should join front to strengthen the ACP position in the upcoming WTO negotiations.

During the Ministerial meeting in Brussels in July 1999, different perspectives of the negotiating parties were still evident. While the EU argued for a consultation and information of all actors in the political dialogue, the capacity-building among the various actors and the involvement of them in the actual implementation of the co-operation agreement, the ACP side once again highlighted the prime importance of national governments and authorities in the process, as well as the need to verify the

[54] Interview with C. Greenidge in Development + Co-operation Vol.2, 2000.
[55] EUROSTEP Proactive File No.133, 14. May 1999, p.1.
[56] P.G. Robleh, Ambassador of Ethiopia in Brussels, in an EUROSTEP-organised meeting on 10 June in Brussels.
[57] G.K. Pepson, Ambassador of Papua New Guinea in Brussels, in an EUROSTEP-organised meeting on 10 June in Brussels.
[58] J.-G. Goulongana, Ambassador of Gabon in Brussels, in an EUROSTEP-organised meeting on 10 June in Brussels.

identity and definition of non-governmental actors.[59] The parties could only agree to involve non-governmental actors „..on the margins of joint institutions and in dialogue outside these institutions“ (EU Commission 1999b). Further discussions to formulate key sentences were than delegated to civil servant level (EU Commission / ACP Group 1999f). European NGOs have repeatedly urged the negotiating parties to commit themselves to a clear definition of the nature of civil society participation within a separate chapter of the framework agreement which would include a formal expression of NGO involvement in all areas of the partnership[60]. The parties finally agreed on the scope of participation of non-governmental actors at their Ministerial meeting in December that is still rather vague and open for interpretation. Non-governmental actors (including the private sector, trade unions and other social organisations, and civil society organisations) shall, where the parties believe it be appropriate, be informed and involved on co-operation policies and strategies (e.g. be consulted during the drafting of the National Indicative Programmes), be involved in the implementation of co-operation projects, and be provided with the capacity-building support regarding organisation and representation and be provided with financial resources. According to Muthoni Muriu of the ACP Civil Society Forum this, however, does not mean that EU funds will be made directly available to NGOs in ACP countries.

### 4.5 Financial instruments

The ACP countries principally agreed with the EU suggestion on the need of future simplification and rationalisation of Lomé financial instruments in order to increase their accessibility. In the past, bureaucratic hurdles on the EU side clearly have in many cases hindered ACP countries from a more effective utilisation of EDF funds[61]. Therefore, there was broad agreement among the negotiating parties on the need of simplification of the funding regimes. On the other hand, there was strong disagreement on how these objectives should be reached. While the ACP wished to focus discussions on the bureaucratic hurdles of financial co-operation such as the tendering process, the EU was concentrating on the overall reform of the aid development framework which would have little effect on the efficiency and effectiveness of EU aid (ERO 1999). Major points of controversy included whether so-called „blocked funds“ should be rolled-over into a new EDF and how the EU proposal on rolling programming should be implemented in terms of available ACP administrative capacities (ibid 1999).

The ACP repeatedly expressed their concern that rationalisation of instruments must neither lead to the overall reduction of the budget lines available nor their volume under a new framework convention. Instead Carl Greenidge stated that if the EU was proposing new and widened policy targets in the new co-operation agreement it should also be prepared to have more financial instruments to meet these different targets[62]. During the negotiations it became clear that funding for EU co-operation projects was going to be substantially cut in order to facilitate reconstruction and restoration in the Balkans which was initially estimated to average 1 billion € a year over the next three years. The EU budget authority agreed in December 1999 to provide 500 million € for short-term reconstruction and an additional 500 million € for 2001 / 2002. Since the Commission (as its member states) was looking for sectors in which funds could be saved it seemed likely that funds for development assistance would be significantly affected. EUROSTEP, in a statement send to the new president of the European Commission Mr. Romano Prodi in June, therefore, called upon the Commission not to redirect ODA resources already earmarked for Africa, Asia and Latin America towards the Balkans at the expense of funding for a new ACP-EU agreement.[63] Additionally, financial resources that would be available to ACP countries have been threatened from another side: In order to meet EU's additional contribution to the HIPC-initiative according to the objectives of the Cologne G7-Summit 1999, the Commission has proposed to use

[59] EUROSTEP Proactive File No.144, 6. August 1999, p.1.
[60] E.g. open letter by EUROSTEP, NGDO-Liaison Committee, APRODEV, WIDE, CIDSE and EURODAD addressed to both the Commission and the EU Development Council dated 6th July 1999.
[61] Lack of administrative capacities on the side of ACP countries to effectively utilise available funds has however at least in some cases contributed to this situation
[62] C. Greenidge in a IPS-organised hearing on 8-10 July in Brussels quoted in EUROSTEP Proactive File No.140, 9. July 1999, p.1.
[63] EUROSTEP Proactive File No.136, 11. June 1999, p.2.

resources from the 8th EDF that have not been utilised by the ACP countries for ACP/EU co-operation amounting to over 1 billion € in 2000.[64] However, since the reallocation of EDF resources would require the approval of the EU-ACP Joint Council, the EU cannot implement this intention one-sidedly.[65] After the European parliament adopted the EU's budget for 2000 it became however clear that the reconstruction of Kosovo would not be financed by a massive redeployment of other funds for external actions, including those for developing countries.[66]

There was also some discussion about the future programming of aid.[67] In an effort to improve the speed, quality and profile of EU external aid the Commission released its new strategy on the reform of external aid in May 2000[68]. The proposal includes the transformation of the Commission's Common Service for External Relations (SCR) into a new institution called Euro Aid. This new office will be jointly managed by a board with the EU Commissioner for External Relations (Chris Patten) as Chair and the EU Commissioner for Development (Paul Nielson) as Chief Executive. Other board members include the EU Commissioner for Trade (Pascal Lamy), Enlargement (Günter Verheugen) and Economic and Monetary Offices (Pedro Solbes Mira).[69] Whether this new office will meet the target of streamlining the Union's external aid remains to be seen.

During the negotiations, the Commission, at one point, proposed to abandon the system of National Indicative Programmes (NIPs) in favour of individual country strategies jointly prepared by the Commission and the ACP. The Commission criticised that in the past most countries have failed to draft their own NIPs. In reality the Commission has done most of the work to draft the NIPs which consequently resembled the Commission's own country strategy papers. NIPs, however, are still an integral part of the new agreement. To guarantee their implementation the parties agreed on an annual operational review. The Commission further proposed for both parties to jointly prepare a long term country support programme equivalent to NIPs. This idea was included into the new framework agreement by the introduction of a new Country Support Strategy (CSS) that should summarise the country's own medium-term development objectives and strategies. In the EU' view, the CSS, jointly drafted by the ACP country, a wide range of actors in the development process and the EU, should help to build local ownership of co-operation programmes. The CSS will be subjected to a mid-term and end-of-term review. In reality, this is not an innovation but replaces the EU's own internal country strategy papers, which formed the basis for the EU's contribution to the NIPs. Following the development of the CSS each ACP country will be responsible for drafting a NIP which will be adopted by common agreement. To take account of the new focus on regional co-operation, the parties additionally agreed on the joint formulation of Regional Support Strategies (RSS) that will lay out the Region's development strategies similar to the CSS. Regional Indicative Programmes will be subsequently drafted and be subjected to a mid-term and end-of-term review. Bringing in non-state actors into the process of drafting the CSS/RSS, the NIPs/RIPs and the annual reviews will require a significant amount of financial and logistic support to them if participation should be meaningful.

As part of the regional capacity-building process, the Commission and the ACP secretariat, in Mid May 2000, announced plans to hold regional seminars in the ACP countries on the new rules of programming of aid under the new framework agreement. These seminars will involve the Commission delegations in the ACP countries, representatives of the host country's government, the Regional Authorising Officers (RAOs) and representatives of ACP civil society. The selection of civil society representatives will be jointly done by the EU delegations and the National Authorising Officers (NAO), the ACP country minister responsible for ACP-EU co-operation. Seminars are scheduled to begin right after the signing ceremony of the new agreement and are hoped to be completed by September 2000.[70]

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[64] German Foreign Minister Joschka Fischer called upon the EU to present a proposal to use EDF funds to meet the objectives of the Cologne European Summit (EUROSTEP Proactive File No.147, 17. September 1999, p.2).
[65] EUROSTEP Proactive File No. 148, 24. September 1999, p.1. EU Commission (2000) Communication to the Commission on the reform of the Management of External Aid, Brussels, p.4
[66] EUROSTEP Proactive File No.161, 23. December 1999, p.2.
[67] ibid.
[68] EU Commission (2000) Communication to the Commission on the reform of the Management of External Aid, Brussels.
[69] EUROSTEP Proactive File No.181, 19. May 2000, p.2.
[70] EUROSTEP Proactive File No. 181, 19. May 2000, p.2.

## 5. The last months of negotiations – A mad scramble

With respect to the agenda of unresolved issues it seemed difficult for the negotiating parties to achieve progress at the ACP-EU Ministerial Negotiations Meeting in December 1999, which was supposed to be the final negotiating round. The gap between the parties firm commitments to arrive at the conclusion of a new partnership agreement by fall 1999 and their willingness to compromise in the most crucial areas did not leave much room for optimism. The four negotiating groups published their last joint draft reports illustrating the progress of negotiations during the Ministerial Meeting that took place from 29. – 30. July in Brussels. Comparing them to the outcomes of the last Ministerial Meeting in Dakar in February it is obvious that little progress has been made in the crucial issues of negotiation at working group level since.[71] Therefore there was an increased pressure on both sides to reach an agreement.

Issues raised by the central negotiating group in the draft reports comprised the inclusion of good governance as central guideline, the nature of the non-execution clause, migration and illegal immigration, the role of non-governmental actors and accession mechanism to the ACP group. Especially the formulation of the non-execution clause proved to be difficult. The private sector group included issues such as investment guarantees and the creation of a new agency, the restitution of cultural property and again the role of non-governmental actors. They drafted a number of key sentences to be included into the framework agreement. The group on instruments and finance did not win common ground with respect to future trade co-operation. They added the scope of debt support, the nature of financial co-operation instruments, financing terms and conditions, the mechanism of resource allocation under the indicative programmes, financing for intra-ACP programmes and others. Disagreement was still noted on the co-operation in the international framework, trade in services, trade and working conditions and on consumer rights. Already in Dakar the trade negotiating group had been unable to arrive at issues to be raised at the July ministerial round.

Given the obvious weakness of the ACP negotiating position on the crucial issues mentioned above it remained possible that no agreement would be reached on the important trade issues during the remaining month of negotiations. Mr. Satu Hassi, Finnish Development Minster and President of the EU Development Council, warned of serious difficulties if negotiations were not concluded within time: „We would be in a legal vacuum and there are no guarantees that the WTO would give a new waiver if we prolong the current convention".[72] Interestingly, the common EU trade negotiating directives have faced some disagreement from single member countries during the last Ministerial meeting (UK and the Netherlands).

In the Ministerial negotiating session on December 8th, which lasted until 6:00 am of the following day, the EU succeeded in pushing a lot of its proposals into the new co-operation framework. In what has been described as 'a mad scramble' the negotiations finally reached consensus on a number of controversial issues of the new framework agreement that were summarised in joint reports of the negotiating groups. On trade, the parties agreed on an 8-year preparatory period before the introduction of REPAs for those countries that wish to do so. Following the conclusion of new trade arrangements there would be a 10 to 15 year transition period. Agreement still needed to be reached on how the EU would improve market access for ACP countries and the provisions that would replace the dismantling of the rum and rice protocols that were attached to the old convention. Good governance the negotiating parties agreed to include the principle as a fundamental element, as opposed to the essential elements, into the new agreement. Suspension of aid would only be considered in 'serious' cases of corruption. Agreement on the migration issue could also not be reached.

Yet the ACP side differed still in a number of issues that remain to be solved.[73] These included, in addition to those identified by the EU, the duration of the future framework agreement (15 or 20 years or even longer) as well as the size of the financial envelope for the next 5 years. The ACP claimed that the EU only minutes before the closing of the negotiations announced the size of the

[71] EUROSTEP Proactive File No. 141,16. July 1999, p.2, EU Commission / ACP Group 1999f.
[72] EUROSTEP Proactive File No. 149, 1. October 1999, p.1.
[73] EUROSTEP Proactive File No. 160, 16. December 1999, p.1.

financial envelope (13,5 billion € for the next 5 years) thus preventing the ACP to immediately react to this figure.

Negotiations were finally concluded in the early hours of February 4th at the end of the 4. ACP-EU Ministerial Negotiations Meeting in Brussels.[74] After the conclusion both the EU and the ACP released press notes that elaborate on the new agreement reached[75]. According to some observers, sparks flew during the closing stages of the negotiations when the controversial issues of migration, good governance and trade had to be settled. Until the very end there was the fear that the dispute over migration would block the whole agreement. A draft article on migration included a bracketed clause proposed by the EU stating that "...each party (both EU and ACP) would under an obligation of the agreement readmit nationals from other countries or stateless person travelling from their territories if these persons were found to be illegally residing in the other party's territory". This clause was claimed to be non-negotiable by the EU although the ACP found this clause to be unjust and in violation of existing international laws. The EU motivation for pushing this clause stemmed from an earlier decision by the EU Justice and Home Affairs Council, in December 1999, to include this clause as 'standard' wording into all EU agreements involving third parties. Finally a compromise was found resulting in an enabling article on illegal migrants subject to the constraint of international convention and law. The issue will be further dealt with in bilateral agreements with individual ACP countries.

On trade the negotiators agreed to two Joint Declarations, one on non-discrimination, the other on market access in the EU-ACP partnership, to be attached to the new agreement. Other issues were agreement was finally reached, included the rules of origin that will be applicable during the preparatory period, future handling of the commodities rice, rum and beef and veal, regulations regarding investment financing and promotion of foreign direct investment in ACP countries, economic sector development and final provisions regarding export revenue fluctuations. While adhering to the WTO principles of liberalisation and reciprocity the non-LDCs in the ACP group will be given whatever flexibility is available to explore alternative trade arrangements outside of a Free Trade Area, if they desire so (so-called alternative trade arrangements). The EU finally agreed to a duration of 20 years of the new agreement, but remained firm on the financial envelope indicated in December.

[74] EU-Commission (2000) EU-ACP Negotiation Information Memo No. 10 – Conclusions of the Brussels ministerial conference hold on 2 and 3 February. Available under http://europa.eu.int/comm/development/event/negotiatin10_en.htm

[75] EU Commission (2000) The new ACP-EU agreement – General Overview, available under http://europa.eu.int/comm.development/acp_eu_agreement_en.htm, ACP General Secretariat (2000) On the conclusion of the successor agreement to the Lomé convention, available under http://www.oneworld.org/acpsec/gb/press/037900_e.htm

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