



The Cotonou Agreement – New Perspective for European Trade Policy?

Documentation

International Conference
in Preparation of the Negotiations
between EU and ACP Countries
on Regional Trade and
Economic Cooperation Agreements

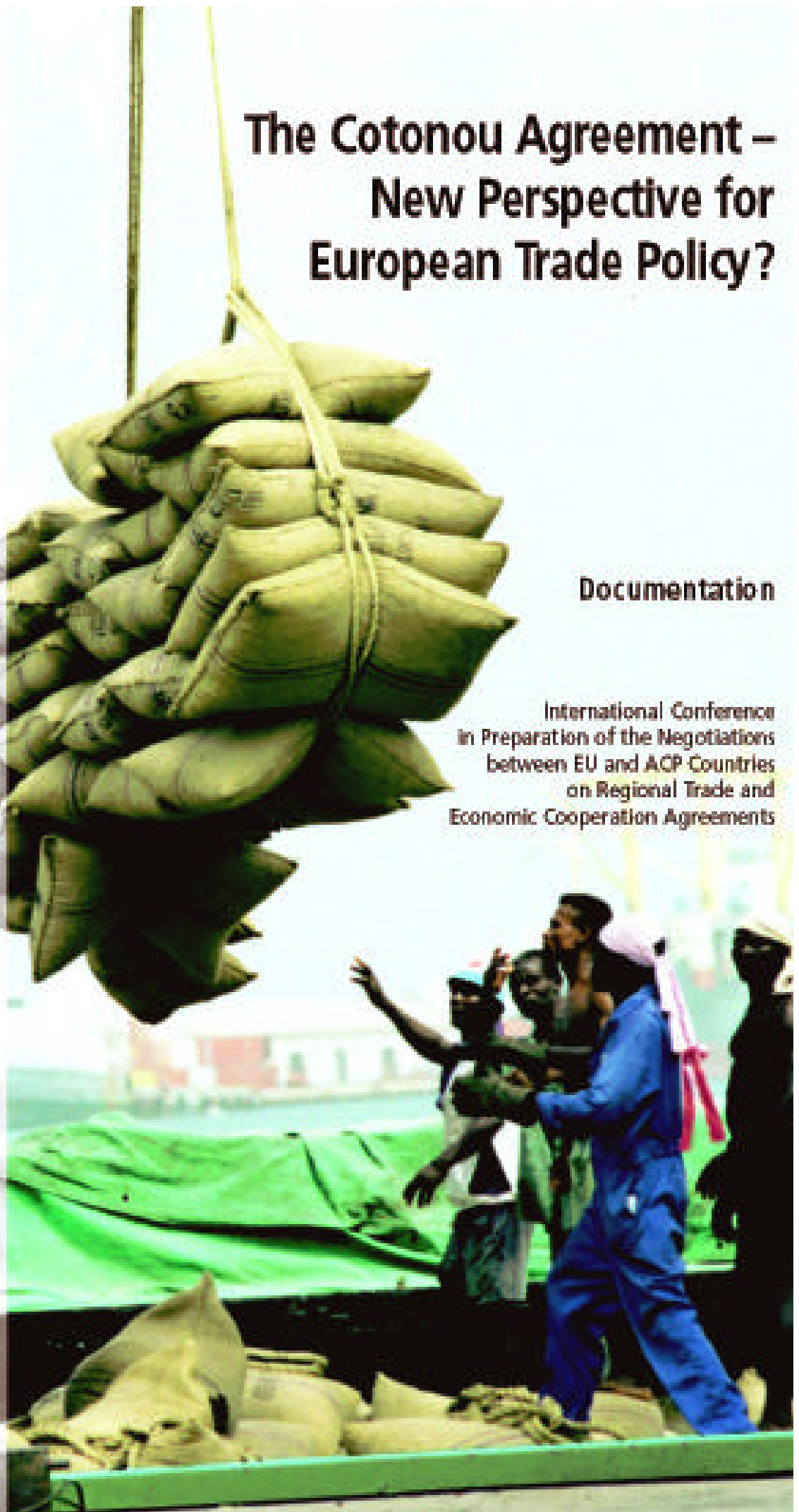


weed



terre des
hommes

**FRIEDRICH
EBERT
STIFTUNG**



IMPRINT

The Cotonou Agreement – New Perspective for European Trade Policy?

International Conference in Preparation of the Negotiations
between EU and ACP Countries on Regional Trade and
Economic Co-operation Agreements
Berlin, 7.-8. March, 2002

ISBN: 3-9808227-0-2

Organisors:

Friedrich-Ebert-Stiftung
Hiroshimastr. 17
D-10785 Berlin
Tel.: 030-26935919
Fax: 030-26935959
E-Mail: volker.vinnai@fes.de
Internet: <http://www.fes.de>
Kontakt: Volker Vinnai

terre des hommes
Ruppenkampstr. 11a
D-49084 Osnabrück
Tel.: 0541 - 71010
Fax: 0541 - 707233
E-Mail: vernetzung@tdh.de
Internet: <http://www.tdh.de>
Kontakt: Peter Eisenblätter

Weltwirtschaft, Ökologie & Entwicklung (WEED) e.V.
Bertha-von-Suttner-Platz 13
D-53111 Bonn
Tel.: 0228 - 766130
Fax: 0228 - 696470
E-Mail: weed@weedbonn.org
Internet: <http://www.weedbonn.org>
Kontakt: Klaus Schilder

Editors:

Klaus Schilder and Jana Hönke

Cover photo:

European Commission, Photo by Thomas Dorn

Cover design:

Ralf Heinen

Print:

Druckerei Plump, Bonn
100% recycling paper

2.50 Euro (add shipping & handling)

Berlin / Bonn, June 2002

CONTENT

Introduction	1
I. WHO PROFITS FROM FREE TRADE? – ENVIRONMENTAL AND SOCIAL IMPACTS OF REGIONAL TRADE AND INVESTMENT AGREEMENTS	
<hr/>	
1. Impact and Consequences of Trade Liberalisation Policies. Klaus Schilder.....	2
2. Regional Integration and Liberalisation – Challenges to SADC in Negotiating Economic Partnership Agreements (EPAs) Rev. Malcolm Damon	7
3. Regional Co-operation and Integration in the Caribbean. - The Effects of New ACP-EU Trading Arrangements. Linston Cumberbatch	11
4. Which Role for the New Actors? – Civil Society Participation in the Cotonou Process. Bibiane Mbaye Gahamanyi.....	18
II. EUROPEAN TRADE POLICY INITIATIVES FOR A BALANCED AND SUSTAINABLE PARTNERSHIP WITH SOUTHERN COUNTRIES	
<hr/>	
5. European Trade Policy Following Doha Increasingly Regional? Initiatives for a Balanced and Sustainable Partnership. Evita Schmiege	23
6. Cotonou in Its Regional and Multilateral Context. Christopher Stevens.....	26
7. To Sign or Not to Sign? EPAs and Alternative Options for EU-ACP Negotiations. Paul Goodison	36
8. The MAI through the Back Door? Investment Liberalisation in Regional Free Trade Agreements. Sabina Voogd.....	44
9. Options for Participation of ACP and EU Civil Society. Simon Stocker.....	46
III. ON THE EVE OF NEGOTIATIONS – POLICY REQUIREMENTS FOR FUTURE TRADE AND ECONOMIC CO-OPERATION AGREEMENTS	
<hr/>	
10. Summary of Policy Dialogues	
10.1. Trade Policy	51
10.2. Investment Policies	57
10.3. Civil Society Participation.....	60
IV. SUMMARY / ZUSAMMENFASSUNG	60
<hr/>	
V. AUTHORS	68
<hr/>	
VI. SELECTED RESOURCES	69
<hr/>	
VII. ANNEX	71
<hr/>	

INTRODUCTION

The countries of Africa, the Caribbean and the Pacific (ACP) are to a large extent marginalised in world trade. 25 years of EU-ACP co-operation under the framework of successive Lomé conventions have not been able to significantly change this. The new Cotonou Agreement, signed on 23. June 2000 in the capital of Benin, puts increasing emphasis on the liberalisation of trade relations between the EU and the group of countries (ACP).

The new EU-ACP agreement foresees the beginning of negotiations for so called 'Economic Partnership Agreements' (EPAs) between the European Union and the ACP countries in September 2002, to be concluded by January 2008 at the latest. Before the negotiations start, ACP countries are expected to finalise the regional configuration in which they will begin negotiations on new trade agreements with the EU. Discussions on the European negotiating directives are currently in a final stage, the ACP group is expected to present its negotiating mandate later this year.

Against this background *terre des hommes* Germany, World Economy, Ecology & Development (WEED) and the Friedrich-Ebert-Foundation held an international conference entitled "*The Cotonou Agreement - New Perspective for European Trade Policy?*" on the 7. and 8. March, 2002, in Berlin. It was the organisers objective to subject the strategies and aims of European trade policy towards the ACP countries in its totality to critical examination and investigate its underlying political tendencies. The organisers intended to contribute to a broad debate on the direction of future EU regional trade policy and to formulate political expectations and recommendations for political actors in Berlin and Brussels. Furthermore, it is of utmost importance to include the general public in

the broad debate on the ecological and social impacts of trade agreements.

The present publication reflects the debate surrounding three main areas:

- I. Who profits from free trade - environmental and social impacts of regional trade and investment agreements
- II. European trade policy initiatives for a balanced and sustainable partnership with southern countries - implications for EU, ACP and trade co-operation
- III. Policy requirements for future trade and economic co-operation agreements.

In order to encourage a lively and informed debate, a number of non state actors from African countries and from the secretariat of COMESA were invited. From the European side, the Director of DG Trade, the Director of the Secretariat of the Development Committee of the European Parliament and a representative from the ACP Secretariat, all of whom are involved in the preparation of the upcoming negotiations, participated in the conference. Several representatives of European NGOs presented their views on future ACP-EU economic co-operation. In addition, a representative from the Federal Ministry of Economic Co-operation and Development joined the debate.

The organisers express their hope that this publication serves as a timely contribution to the current discussions, clarification of issues and development of strategies to ensure that the forthcoming negotiations between the EU and ACP countries will serve the ultimate aim of sustainable development in ACP countries.

Peter Eisenblätter, *terre des hommes*

Klaus Schilder, WEED

Volker Vinnai, Friedrich-Ebert-Stiftung

I. IMPACT AND CONSEQUENCES OF TRADE LIBERALISATION POLICIES

KLAUS SCHILDER

Let me start my presentation on some of the social and environmental consequences of regional trade and investment agreements, such as the so-called „Economic Partnership Agreements“ (EPAs) foreseen under the Cotonou framework, with an initial comment on the underlying objectives of the European Union's trade policies, which will be followed by some reflections on the fundamental consequences of trade liberalisation policies.

To start with a brief remark on the EU's role as a geo-strategic super-power: The EU is not primarily an international development institution. EU trade and investment agreements first and foremost serve European economic interests in the global competition on access to the markets of so-called “high performance economies“ in the Southern hemisphere. To be frank: Behind the rhetoric to support regional integration efforts in ACP countries lurks the EU's intention to integrate economically attractive regional integration initiatives in free trade areas with the EU, thereby opening them up for competition from the economically dominating partner. In other words, when treating economies of vastly different size and scale according to equal rules, one will not be surprised to find unbalanced outcomes. This also applies to the upcoming Cotonou negotiations: By introducing reciprocity in mutual EU-ACP free trade agreements at a fast pace, the EU will potentially gain a higher economic profit as compared to the economically much weaker ACP partners.

In addition, regional free trade agreements create precedents that will increase pressure on progress in the multilateral liberalisation agenda within the ongoing WTO negotiations. While within

the WTO negotiations on the new, so-called ‘Singapore-Issues’ (investment, competition, public procurement and trade facilitation) are likely to start only after the 5. Ministerial Conference in 2003, the draft EU negotiating directives already include some trade-related issues such as investment, public procurement, standards, technical regulations and conformity assessments, and data protection for negotiations with the ACP on future EPAs (compare annex).

Introduction

Economic liberalisation policies are rooted in the neo-classic paradigm assuming that trade liberalisation towards developing countries stimulates economic growth which in turn contributes to poverty reduction. The increased competition from imports shall lead to specialisation and efficient allocation of resources in developing countries industries, while at the same time forcing inefficient producers and sectors to adapt thus freeing society from the burden of unprofitable sectors of economy. So far for textbook theory.

Within recent years, however, a number of studies have shown that the nexus between trade liberalisation and welfare effects for poorer parts of the population is not self-evident. In reality, it is dependent on a number of underlying conditions. These include questions of sequencing and grading of liberalisation measures and appropriate safeguard regulations as much as effective policy instruments to guarantee the equitable distribution of liberalisation gains. Trade liberalisation policies completely relying on the regulative power of markets and

private enterprises as their main actors were first introduced in the late 1980s by the International Financial Institutions within the context of so-called “Structural Adjustment Policies” (SAPs). Some of the typical reform instruments comprised the reduction of import duties and other protective measures, the simplification of tariff structures, the dismantling of special tariff concessions as well as the phasing-out of export subsidies. Due to time constraints I will not be able to go into greater detail.

In the following I will now turn to some of the common consequences and implications of trade liberalisation policies in developing countries in general and ACP countries in particular. This investigation is based upon a survey of 46 country and sector studies investigating the impact of trade liberalisation in the South, more than half of which in ACP countries. Studies originate from various sources including the Food and Agriculture Organisation of the United Nations (FAO), the United Nations Environment Programme (UNEP), national research institutions, as well as civil society organisations. The later includes the Structural Adjustment Participatory Review International Network (SAPRIN) which recently concluded its analysis of nine Poverty Reduction Strategy Papers (PRSPs)¹. Yet, a word of caution at the beginning: The majority of studies does not explicitly address the consequences of EU economic policy for ACP countries since it is generally difficult to differentiate the effects of trade liberalisation from the consequences of other macro-economic adjustment measures undertaken within SAP-reforms. It becomes quite clear, however, that most of the studies are focused on African countries. Although the studies are difficult to compare for their broad range of methodological approaches, some of the consequences of neoliberal economic policy as they

emerge from the literature survey, will be summarised below.

The negative impacts of trade liberalisation are distributed quite unevenly. The main burden is carried mostly by the rural poor in the countries under investigation. Most of the researchers agree that market-based forces alone have not been sufficient to guarantee the social and environmental sustainability of trade and investment liberalisation policies. Most of the studies share some or all of the following concerns, most of which are strongly interdependent:

- increasing balance-of-payment deficits through an import surge from developed countries and stagnating export volumes
- indiscriminate dumping of subsidised export products originating in developed countries endangers food security and destroys local markets
- increase in the export-oriented production of “cash crops” on the expense of traditional agricultural products, together with considerable social and environmental damage resulting from export orientation
- preferential conditions for larger producers and mostly foreign-dominated transnational corporations
- loss of land through concentration processes in the rural production system and the absence of effective social safety nets forced many small producers out of business and contributed to their increasing marginalisation
- increasing rates of unemployment and impoverishment in particular among the rural population
- particular adverse effects on women producers who are increasingly forced into the informal sector
- environmental destruction and over-exploitation of natural resources (water, soil, forests) and subsequent decrease in rural productivity

¹ Compare: www.worldbank.org/poverty/strategies/index.htm

- decreasing government expenditures in the social sector including the health, education and other social services budgets
- threats to food security, in particular in rural areas, through decreasing household incomes and poorer food quality
- increased migration from rural to urban areas, which in turn increases social tensions in the cities

Liberalisation too fast and too far reaching

According to research available, consequences of liberalisation policies most often lacking adequate social safeguard packages have had severe impact on the rural African population and small and medium enterprises, in particular. In Zimbabwe, for example, trade liberalisation measures under the structural adjustment policy framework contributed to an increase in rural unemployment. Giving up on protective policies for the domestic textile and clothing industry has led to the wide-spread closure of small enterprises and resulted in the dismissal of over 20.000 workers. In addition, workers have been adversely affected through privatisation and rationalisation in export-oriented industries. A significant increase in informal sector employment following trade liberalisation measures, the so-called “backyard business”, could only in part be offset by the creation of new employment opportunities in higher growth export-oriented sectors such as horticulture and the agro-processing industry.

Adverse effects on women

The vast majority of victims of liberalisation are female. Most, if not all of the studies surveyed in the course of this analysis agree that it is mostly the women who bear the burden of increasing un-

employment and increased engagement in informal sector occupations. In rural areas, women carry the main responsibilities for food security. Falling household incomes caused by an increased competition with foreign imports on local and regional markets forces women in particular to accept additional informal wage labour. In the end, mainly women have to carry this additional burden on top of their traditional responsibility for household and subsistence farming activities.

Consequences for small-scale farmers and rural food security

Most of the studies agree: negative effects on the livelihood of small-scale farmers and rural food security outweigh liberalisation benefits. As a consequence of massive reductions in subsidies for farm inputs such as fertilisers, seeds and agro-chemicals, rural production costs have sky-rocketed in a number of countries forcing a multitude of small and medium producers out of business. In addition, traditional co-operatives have been taken over or replaced by larger agro-industrial companies. This situation is aggravated by the lack of appropriate social safety nets for the affected population. In Kenya for example, following the implementation of structural adjustment measures, the proportion of people living in poverty increased by 47 percent in rural areas, as compared to a 29 percent increase in urban environments. Contrasting prior expectations, liberalisation did not result in increased proceeds from trade in agricultural products or redistribution of food into regions of crises.

In many cases, hopes for a positive trade-off between growth in export-oriented agricultural production and rural food security have not materialised. Quite on the contrary, the data available argues for a strong correlation between food security in rural households and the proportion of food items from local and regional production. Due to broad fluctu-

Customs duties - an important source of revenue

In many countries within the ACP group, customs duties form a significant proportion of government revenues. Several studies thus examine the extraordinary importance of customs duties for national budgets, while at the same time hinting at the regulatory function of duties for local markets and for safeguarding the interests of domestic producers vis-a-vis the greatly fluctuating world market prices or sudden import surges from competing imported goods. A drastic reduction in revenues from import duties as a direct consequence of trade liberalisation policies will, in the absence of appropriate flanking and stabilising measures, lead to a dramatic decline in national budgets, in particular in the health, education and social sector.

Political recommendations

Taking into account the results of these case studies, a few recommendations can be drawn for the negotiations between the EU and ACP countries on new regional economic co-operation agreements, which may contribute to correcting or minimising the negative impact of further trade liberalisation policies on ACP countries. Just to name a few:

1. Secure that trade policy objectives will contribute in a meaningful and coherent way towards the aims and objectives of national development strategies of countries and regions.
2. Adequate protection for vulnerable and infant industries in developing countries from the massive competition by European producers.
3. Effective measures to address and overcome existing supply side constraints, caused by lack of institutional capacities, or deficiencies in infrastructure or human capital.
4. Protection and efficient support for local small and medium producers,

which are of paramount importance for social safety, provide labour especially for women, contribute to local food security and drive regional trade.

5. Creation of specific safeguard programmes for women working in agriculture and small and medium enterprises
6. Conduct of comprehensive environmental and social impact assessments as a pre-condition for the start of negotiations on free trade agreements
7. Strengthening of the existing institutional framework conditions, in particular with regard negotiating processes running in parallel on the multilateral, inter-regional, intra-regional and bilateral level. Creation of effective safety nets that contribute to minimise inevitable adjustment environmental and social costs following any trade liberalisation policy

In any case, the biggest challenge within the context of progressing economic liberalisation is to integrate the objectives of economic competitiveness, sustainable resource management and rural food security – in other words – to build a partnership for development that is economically fair, environmentally sustainable and socially just.

2. REGIONAL INTEGRATION AND LIBERALISATION

CHALLENGES TO SADC IN NEGOTIATING ECONOMIC PARTNERSHIP AGREEMENTS (EPAs)

MALCOLM DAMON

The Southern African Development Community (SADC) has a complex political and economic history. These complexities will become even more significant as SADC nations begin to negotiate Economic Partnership Agreements (EPAs) with the European Union (EU). In September 2002, the EU will start negotiating EPAs with ACP countries as set out in the Cotonou Agreement. The overall question I will address is therefore, "How prepared is SADC to start negotiations with the EU on EPAs?"

First I will discuss the institutional and political readiness of SADC. Then I will address the constraints faced by SADC in the light of existing trade agreements, on a regional and bilateral level. This will be followed by an analysis of the EU's agenda and policies and its impact on the upcoming negotiations on EPAs and lastly I will describe the choices and options open to SADC and its member countries.

SADC's preparedness to negotiate trade agreements, on behalf of its members, remains open to question

First, there are signs that SADC's willingness to negotiate trade agreements has overtaken its readiness to do so. On an institutional level, SADC's decentralisation has hampered its capacity for coordinated action. Since SADC's formation, different units operated in different member countries which took

responsibility for facilitating particular projects or units.

This has affected the development (or lack thereof) of the Southern African Trade Protocol. The SADC trade protocol is intended to regulate trade within SADC, replacing a range of existing bilateral agreements. The protocol aims to promote trade among SADC countries by establishing preferential tariffs for goods from these countries. However, progress has been slow because weaker countries feel they will be more severely affected by the economic hegemony of South Africa and differences on rules of origin policies.

Recently, SADC has centralised its operations by moving its secretariat and all of its project co-ordination to Gaborone, Botswana. Centralisation has enhanced its profile as a supranational regional body, and is likely to enable it to play a more effective role in facilitating debate and action on matters of concern, both within the region and in relation to countries and blocs outside Southern Africa. However, it is still too early to assess the long-term impact of these institutional changes.

On a political level, most SADC member countries have been cajoled, via both sticks and carrots, into accepting the prevailing neoliberal dogma that foreign direct investment will lead to economic growth and "trickle-down" development. They have been pressured by the International Monetary Fund (IMF) and the World Bank into introducing structural adjustment programmes (SAPs) that typically demand rapid, wholesale

trade liberalisation. SADC's acceptance of the Cotonou Agreement, with its emphasis on the phasing out of the preferential tariffs from which ACP developing countries benefited under the Lomé regime, is further evidence of the dominance of this mind set among SADC governments. Without the research and analytical capacity to critically examine the impact of these policies, SADC risks to engage its members in trade agreements that are not in the long-term interests of the majority of their populations.

Second, SADC's scope to negotiate new trade agreements is constrained by the commitment of its members (and, in particular, South Africa) to existing agreements. The most important of these is the South Africa - European Union Trade and Development Co-operation Agreement (EU-South Africa TDCA), concluded in 1999. The EU-South Africa TDCA is a free trade agreement which provides for trade liberalisation and tariff reductions on an asymmetrical basis in terms of special protocols on particular goods like wine, textiles, automobiles, etc.

Since South Africa has already signed an agreement with the EU, it is likely to seek a regional agreement that is consistent with the terms of its existing commitment. As a result, any trade agreement concluded between SADC and the EU could follow the same framework as that of the EU-South Africa TDCA.

The potential problems are obvious if one looks at the experience of the South African Customs Union (SACU) in terms of a multilateral agreement between Botswana, Namibia, Lesotho, Swaziland and South Africa. Although the EU-South Africa TDCA is nominally an agreement between the 15 member states of the EU and South Africa, it also has profound impact on Botswana, Lesotho, Namibia and Swaziland (the BLNS countries) because of their relationship with South Africa through their common customs union SACU.

Paul Goodison, Head of the Brussels-based European Research Office (ERO), argues that the BLNS countries became effectively reciprocal trade partners with the EU because of the existence of SACU and its integrated tariff structure. This means that Less Developed countries like Lesotho, Namibia and Swaziland are exposed to imported goods and services from the EU, in spite of the terms of the Lomé Convention and the Cotonou Agreement. The lack of custom controls and the added bureaucratic burden to control rules of origin policies of products from the EU which technically should only be sold in South Africa. This combines with the revenue losses these countries suffer because of the EU-South Africa TDCA exacerbated the vulnerability of the BLNS countries. The EU should fully compensate these countries for their revenue losses, which represent a substantial drain on their respective national budgets.

Thirdly, the EU has its own agenda and policies which it brings to the negotiating table. It is not clear that SADC will have sufficient muscles to resist the political and economic coercion of the EU.

Analysis of the EU's agenda and policies and its impact on the upcoming EPA negotiations

We know that the EU intends to use EPAs to integrate ACP countries into the world economy, as the Cotonou Agreement clearly states. What will be the likely impact of EPAs on the region? Local industries will not be able to compete with EU industries that have been built up over years with the help of subsidies and in the case of agricultural products is still heavily subsidised. Gottfried Wellmer in his study on Regional Integration and Reciprocal Trade with the EU shows that most of the intra-trade is between processed goods but only 10% of processed goods are

exported. This indicates that most SADC countries cannot compete with the EU and other developed countries on industrial goods and this will further erode the local industries. It is already happening between South Africa and the rest of the SADC countries in the industrial arena. This means that small, family-owned and operated enterprises that form a significant section of the SADC economy will further disappear leading to more job losses and increasing social problems.

Another problem that has already impacted negatively on the region is the Common Agricultural Policy (CAP) of the EU. The case studies on the collapse of the beef industry of Namibia and Botswana because of beef dumping on the South African meat market are a case in point (Wellmer 1998). The case study on the loss of jobs in the canning industry in South Africa because of the export of cheap, highly subsidised canned tomatoes to South Africa also makes this clear (Head 1999). The impact of the CAP subsidies on dairy products, the sugar industry and other sectors must be addressed by European NGOs. If the EU-South Africa TDCA is anything to go by the EU will protect their agricultural industry at all cost. As was the case with South Africa, ACP countries will have to insist on discussions on CAP and its impact on ACP economies, especially the agricultural sector. The irony is that especially the agriculture sector is the area where SADC and ACP countries in general can compete with the EU if it was not for their strong protectionist measures and still outrageous export subsidies. It was especially in the area of agriculture where South Africa is most competitive that the EU installed the most protective measures. This was done in spite of the fact that the export of South African agricultural produce into the EU is less than 2 percent of the total agricultural export into the EU.

Choices and options open to SADC and its member countries

Clearly, SADC faces many challenges and pitfalls in the negotiation of trade agreements in terms of the Cotonou Agreement. So what are the options open to SADC countries who have previously enjoyed non-reciprocal trade with the EU?

Article 37 of the Cotonou Agreement give countries a choice to join the proposed EPAs or not. The uneven economic realities of SADC where most are members of the LDC group and the dominance of the South African economy, which is four times stronger than the SADC countries combined, further complicates the matter. It is further complicated because the BLNS countries are de facto importing goods from the EU at lower or no tariffs at all.

The EU's position politically is still in favour of Regional Economic Partnership Agreement (REPAs) which means that as far as possible they would like to conclude regional reciprocal free trade agreement with ACP countries.

This leaves the SADC countries with basically three choices: Firstly, BLNS countries may try to negotiate a separate agreement with the EU. This seems highly unlikely because of the development of regional integration and the effect and impact of the EU-South Africa TDCA on these countries. A second option is that LDCs choose not to join the EPAs and instead enjoy the continued benefits of non-reciprocal trade, the quotas and special and differential treatments which they agreed to under Lomé and which equally falls under the new Cotonou Agreement. This in effect would create two distinct trading blocs within SADC which could further undermine regional integration. Dot Keet stresses in her research that this could further weaken the negotiating power of LDCs and open the way for the EU to use its political and economic power in regional and global politics. A third option, which is the most likely, is that a

majority of SADC countries forms an EPA with the EU with certain individual countries choosing not to join. This will certainly weaken the economic development of those countries and increasing trade liberalisation will further undermine their local markets. They will have to compete with products from the EU and the products from stronger SADC countries entering their market further entrenching their dependence.

This presentation clearly illustrates the complexities of one region within Africa and the ACP in relation to the upcoming trade negotiations. However, the question raised in the paper in relation to the preparedness of SADC countries beckons a yes-no answer.

SADC countries are not fully ready to start negotiations for EPAs. The Southern Africa Trade protocol indicates that the time frames are sometimes unrealistic. South Africa thought that SADC countries would conclude their agreement on a trade protocol in 2000. It seems they are only now in 2002 almost ready to finalise the free trade protocol apart from discussions on rules of origin and other matters. The EPAs negotiated between the EU and SADC will also impact on the SADC trade protocol. The Cotonou trade negotiations could negatively affect the development of regional economic integration. Already at the 1999 conference under the theme "Farewell to Lomé", organised jointly by Weed, terre des hommes and KOSA (1999), Dot Keet warned: *"It is of prime importance that the EU does not intervene in the SADC region in ways that push intra-regional trade and regional integration projects towards 'open regionalism' to serve 'the global economy' and global interest. Nor should the EU push SADC towards special reciprocal inter-regional arrangements that even more directly and tendentiously serve EU interest."* Furthermore, the EU-South Africa TDCA has a major effect, not only on South Africa, but also on the region and more

specifically the countries that form part of SACU.

Another important question not raised in this presentation but certainly very relevant for SADC and all ACP countries is *"What can ACP countries learn from the negotiations between the EU and South Africa?"* It is a fact, an open secret, that from the start South Africa was used as a model for the EU policy to move from development and non-reciprocal trade to reciprocal trade and economic integration.

The challenges for SADC, Africa and all the ACP countries are enormous. The question in the final instance is not only "How ready is SADC in relation to regional and economic integration" but "Is trade liberalisation the answer for economic and social development of SADC and Africa?" In others words, we must not loose sight of the broader goal of achieving a form of sustainable development in Southern Africa which will benefit all the people of Southern Africa.

3. REGIONAL CO-OPERATION AND INTEGRATION IN THE CARIBBEAN

THE EFFECTS OF NEW ACP-EU TRADING ARRANGEMENTS

LINGSTON CUMBERBATCH

Introduction

I have been asked by the organizers of this meeting to speak on Regional Co-operation and Integration in the Caribbean and to focus my presentation on supply-side issues and adjustments and the fiscal implications for Caribbean countries from a new reciprocal trade agreement with the European Union. I shall also briefly touch on some of the implications for the region's agricultural exports to Europe as a result of CAP reform.

CARICOM: The main regional integration movement in the Caribbean

A small number of countries established a Caribbean Free Trade Area in 1968 to which other countries subsequently adhered or became associated with. In 1973 a Caribbean Community and Common Market was set up by the Prime Ministers of Barbados, Guyana, Jamaica and Trinidad and Tobago. Antigua and Barbuda, Belize, Dominica, Grenada, St. Lucia, St Vincent and the Grenadines and Montserrat - signed the Treaty in 1974, the Bahamas in 1983. Suriname acceded to membership in 1995 and Haiti became a provisional member in 1997.¹ The customs union set up by the Community

Treaty provided for different treatment including non-reciprocal market access for the small Eastern Caribbean states and Belize (OECS) who were defined as the less developed countries (LDCs). Barbados, Guyana, Jamaica, Trinidad and Tobago and subsequently the Bahamas were defined as more developed countries (MDCs).

The OECS have established their own Community and are more advanced than Caricom in the integration process because they have a monetary union and a single currency and are seeking to establish an OECS Single Market.

CARIFORUM

An entity called CARIFORUM comprised of all the members of CARICOM plus the Dominican Republic and Haiti was formed as the mechanism for the programming and coordination of regional programmes funded under the EDF. It has not been established by treaty and is not a regional economic group *strictu sensu*. Cuba is not a member.

The Caribbean Community has three areas of activity: economic integration; co-operation in non-economic areas; and coordination of foreign policies of independent member states. The free movement of goods and services within the Community and a common external tariff on exports from foreign sources forms the basis of Community policy. A Common External Tariff which applies uniform tariffs from outside the region was applied from 1991. Attempts are actively

¹ The Community has 14 members: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Suriname and Trinidad and Tobago.

being made to establish a Caribbean Single Market and Economy (CSME) and although there has been some progress in respect of the trade aspects of the CSME, the macroeconomic, fiscal, monetary and exchange rate harmonization objectives have not yet been realised.

The Community has also sought to widen the process of regional integration by concluding trade arrangements with the two other Caribbean ACP countries, the Dominican Republic and Cuba and with Venezuela and Colombia. Similar agreements are being contemplated with Central American and other countries.

The establishment of the customs union has led to an increase in intra-regional trade but the benefits have not been evenly spread. The main area of growth has been in manufactured goods and the principal beneficiaries have been Trinidad and Tobago, Jamaica, Barbados and St. Lucia. Trade in agriculture has not grown significantly but it remains important for a number of countries. The region imports mainly manufactured products, consumer goods and capital goods and the main suppliers are the United States and the European Community.

It is this entity, CARICOM which, together with Haiti and the Dominican Republic, that will negotiate some new trade agreement with the EU. Caribbean Heads of Government, that is the Heads of Government of CARICOM together with Haiti and the Dominican Republic, have established a Regional Negotiating Machinery (RNM) to prepare for, participate in and coordinate the region's negotiations with the EU, and in the Free Trade Area of the Americas (FTAA) and the WTO.

A yet unresolved question is the participation of Cuba in a Caribbean-EC trade arrangement. Also to be determined is the mechanism for the exchange of concessions between the EC and the Dominican Republic which is not a member of CARICOM.

I believe that the ACP Group is trying to establish a consensus on a two-phased negotiation. If this happens, the

first phase beginning in September this year would be an all-ACP-EU negotiation on a number of issues of common interest to ACP countries. Those issues include not only principles and objectives but a number of other important issues which the ACP are identifying.

The second phase would be between the EC and different regions in the ACP which declare themselves willing to negotiate EPAs and whose structures legally enable them to enter into an exchange of tariff and other trade concessions. The timing for the commencement of this second series of negotiations is not known as it will depend on the first phase. I see no legal reason why the Caribbean should not be willing and able to negotiate an EPA with the EU.

General background of Caribbean perspectives

The Caribbean is used to being buffeted by storms and hurricanes. We have them every year. They come, often leave devastation in their wake and leave. Some people see an analogy between the effect of these hurricanes and the effect on the region of globalization and the rapidity of change taking place in the world economy. All of the region's economies are susceptible to and are being buffeted by the effects and the pace of globalization and liberalisation. What is more, the regions scarce human and financial resources are having to cope with a plethora of trade negotiations which appear to have more negative consequences than positive ones. Participating in and preparing for the FTAA process, the WTO negotiations and the impending negotiations with the European Union on new trading arrangements is no mean feat for Trade Ministries that might have only three trade officials.

The Caribbean's participation in the FTAA process with its nine Negotiating Groups (I understand that a tenth has recently been created) and its four Non-negotiating Groups should, however,

enable the region to cope with what, it is hoped will be a less intimidating structure for the negotiations with the EU.

All these negotiations imply the loss of traditional export markets on which Caribbean economies have depended for many years. Loss of these markets could result in economic disruption, unemployment and social upheaval. Most of the countries already have large and persistent trade and current account deficits.

Continued policy reform and adjustment is the only way forward. But adjustment is a long, complex and painful process. The expected loss of revenue from import duties is also a concern, particularly in some of the countries where a high percentage of government revenue goes on the payment of salaries.

Already there is substantial poverty in the region although the Caribbean is not generally viewed as a poor region. Unemployment in some countries is as high as 15% and higher among the young. There are also unacceptably high levels of crime and a rising incidence of HIV/AIDS.

It is increasingly being acknowledged that, exacerbated by the problems caused by hurricanes and natural disasters, Caribbean economies are more vulnerable than most². A number of economists have stated in a recent IMF paper that *"because of their relative openness and concentration on a small range of products, exogenous changes in the terms of trade can have significant effects on their fiscal and external positions"*.

On the positive side, Caribbean countries are generally politically stable, have a favourable business environment and relatively high levels of education. Recent economic performance has been good for most countries in the region led by tourism and other services, minerals and mining, textiles and export agriculture –sugar, bananas, and rice - which for the time being benefits from the Com-

modity Protocols and other special trading arrangements with the European Community.

Tourism and information services have grown significantly, to about 40% in 1998 from about 25% in 1994. In the last decade tourism growth has been driven largely by the Dominican Republic and Cuba. Here one must acknowledge the contribution of the European Union whose support for fostering the sustainability and competitiveness of the tourism industry has been very welcome. The region has benefited from the EIB's involvement in loans and equity participation in the hotel sector and the local private sector has made use of EBAS funds. The extent of the Caribbean's dependence on tourism can be judged by the fact that the industry contributes 74% and 89% respectively of the GDP of Antigua and Barbuda and The Bahamas.

Supply-side constraints affecting Caribbean producers and exporters

Current theory holds that a number of factors contribute to a country's growth performance. Among them are Government policy and political and economic stability; a sound macro-economic policy; openness to foreign trade and investment; good infrastructure; the ability to use and to adapt modern technology to production processes; access to finance on competitive terms and the existence of a sound financial system; the efficiency and competitiveness of domestic labour markets and the existence of good management and modern management techniques. Some of these conditions exist in the Caribbean but the region is deficient in most of them.

In his impact study on CARI-COM/Dominican Republic, Dr. Christopher Stevens³ drew attention to some of

² IMF Occasional Paper: "Developments and Challenges in the Caribbean Region" by Samuel Ham, Simon Cueva, Erik Lundback, Janet Stotsky, and Stephen Tokarick

³ Stevens, Christopher (1998) " Study on the Economic Impact of Introducing Reciprocity into the Trade Relations between the EU and CARICOM/Dominican Republic", Final Report, Institute of Development Studies, Sussex.

the policy reforms needed in Caribbean economies - macro-economic, exchange rate, fiscal, monetary and financial, labour market, trade, and agricultural reform - if Caribbean economies are to become more competitive. He pointed out that the extent of the reforms undertaken in the different areas differed from country to country and ranked from tenuous to extensive. While trade reform in some countries was moderate, tax reforms in those countries were partial. And in almost all the countries, agricultural reforms were partial, little, slow or limited. Work done more recently by Caribbean economists has shown that more extensive and wide-ranging and coordinated reforms are urgently needed.

Infrastructure is also vital and much of Caribbean infrastructure is in need of upgrading. Sea, air and road transportation are very important for the Caribbean and so too are the supply of power, water and telecommunications. With respect to telecommunications, the region is suffering from a monopolistic situation which is inhibiting the growth of a telecommunications industry. Education systems are also not producing the type of workers needed by a modern economy and rapidly changing technologies.

There is little doubt that Caribbean competitiveness would be improved if the policy reforms were implemented, particularly if they were done in a coordinated fashion.

As I said earlier, the Caribbean's main exports are agricultural products - sugar, bananas and rice; petroleum and petrochemical products; tourism and financial services; rum and textiles and clothing and light manufactured products. The region has a competitive edge in some of them but is highly unproductive in others. Only two or three of the region's sugar producers have the potential to become competitive if special preferences are removed. The OECS banana producers are unlikely to be competitive with Latin American and African producers. The rice producers with significant injections of capital for upgrading have

the potential to be competitive. But much depends on the WTO negotiations and CAP reform.

A World Bank survey⁴ has found that *"the region's large domestic enterprises have prospered in a deficient and preferential regulatory environment that has been largely inefficient and not competitive"* and that *"the domestic micro-enterprise sector is technologically backward and lacking in capital and skills. Technical assistance, financing and training are needed for their survival and expansion"*.

Where the region seems to have a competitive advantage is in petrochemical products originating largely in Trinidad and Tobago, and in tourism and financial and export services. The growth of the services sector will depend on the ability of the region to supply trained people and the appropriate infrastructure and will need more public investment in training, infrastructure development and negotiated entry by specific firms.

There have been significant improvements in competitiveness in the manufacturing sector in some countries, notably Trinidad and Tobago whose manufacturers have been actively pursuing markets in the wider region. But they too will face fierce competition resulting from the FTAA and any trade agreement with the EU.

Caribbean Governments have recognized the need for further adjustment to their economies and for a comprehensive approach to addressing supply side constraints. As a result, an exercise is now under way to accelerate implementation of the elements in the Caribbean Single Market and Economy.

Examples of EU adjustment support in the Caribbean are not too encouraging. Support provided for the restructuring and diversification of the OECS banana industry does not seem to be bearing fruit or even getting off the ground.

⁴ World Bank (2000) "Towards a Caribbean Vision 2020: A Regional Perspective on Development Challenges", World Bank, CGCED Annual.

Support agreed to in 2000 that was designed to make the Caribbean rum industry more competitive and to improve marketing has not yet reached the recipients.

The ACP Group will unquestionably need special help to adjust their economies in face of competition from EU enterprises and from other sources. EDF resources and procedures are unlikely to meet the challenge. The Group will need to examine the way in which the EU is helping the applicant countries in Eastern Europe (and perhaps the territories in the outermost regions of the EU) to adjust and restructure their economies in order to draw lessons from the process and to get a better appreciation of the costs involved. In so doing they, and indeed the EU, will have to reflect on the meaning of true partnership in the context of the Cotonou Agreement and on the value the EU places today on their long-standing relationship with the ACP.

Some of the fiscal implications of the moves towards free trade

Caribbean Governments have a high dependence on revenue from import duties. This tends to be the case for small economies in general. Many CARICOM Governments, in particular those from the OECS, gain more than half of their tax revenue from import duties (see table 3.1.). Import duties account for more than a half of government revenue in St Lucia, Belize, and the Bahamas. In the Dominican Republic trade taxes accounted for approximately one-quarter of government revenue in 1997 and the external element of a value added tax added a further 9%.

The combined effects of liberalisation resulting from an EPA and from the FTAA would be severe although the precise effects have not yet been calculated. Dr. Stevens concluded that *"the revenue implications of widespread liberalisation would be much more substantial. Trade taxes account for between one-fifth and*

one-half of government revenue in most countries of the region."

Stevens points out that the cost of the tariff loss of countries in the region is in all cases into millions of Euros and in three cases in tens of millions. He drew attention to the need for compensatory tax reform and the role of value added tax in this process.

Other economists⁵ argue that because of lower input costs for producers from reduced tariffs, a wider variety of goods becomes available to consumers at lower prices and enhanced export prospects. This, they argue, results in enhanced export prospects as employment and output increase in the exportable goods and services sectors. They acknowledge that tariff cuts could lead to a reduction in output and employment in certain sectors that face greater competition from lower-cost foreign products but they conclude that *"in most countries the beneficial effects are likely to predominate"* and that *"for the Caribbean region, preliminary evidence suggests that trade liberalisation has brought significant benefits."*

It is true that revenues from goods and services are growing and are now the second most important source of revenue in the smaller countries but they are a significantly lower contributor to the revenue of those countries than trade taxes Paul Goodison insists, however, that where tariffs are eliminated, no matter what the trade stimulating effects, total customs duties collected invariably decline.

The loss of revenue that will result from import duty reductions make it imperative that Caribbean countries continue to broaden and strengthen tax reforms, harmonize taxes throughout the region and improve tax administration and collection. There is no doubt that this is a critically important issue for the Caribbean and indeed for the ACP Group as a

⁵ Stotsky, James / Esther Suss, and Stephen Tokarick (2000) "Trade Liberalisation in the Caribbean", The IMF Quarterly: Finance and Development, June 2000.

Table 3.1. :
The relative importance of import duties and other international trade taxes in the OECS, 1995(%)

Country	Share of trade taxes in total tax revenue	Share of import duties in trade taxes
Antigua	67.7	19.8
Dominica	54.4	13.3
Grenada	55.0	14.0
Montserrat	50.0	9.9
St Kitts	51.9	24.1
St Lucia	57.4	18.8
St Vincent	51.9	13.2
Source: ECCB 1997		

whole and that compensatory measures of some kind must be a key feature of the negotiations.

Caribbean interest in CAP reform

It will be appreciated that because of the importance of agriculture to the Caribbean economy, the region has a special interest in the reform of the Common Agricultural Policy (CAP). The management of the revised banana regime, the plans for the reform of the EU sugar regime and the regime to be established for rice are issues in which the Caribbean has a real interest. One of the problems looming on the horizon is the reform of the Community's sugar regime. It has been estimated that one of the scenarios considered by the Commission last year could, if implemented, have resulted in an income loss to ACP sugar exporters of Euro 250 million per annum.

Some Caribbean interests in a new trading arrangement with the EU

From my perspective, apart from the establishment of an enhanced level of cooperation with the EU and the maintenance and strengthening of ACP unity, the Caribbean's interests in the negotiations with the EU should be two-fold:

firstly, defensive of their existing interests and the maintenance of the *acquis* and secondly, developmental in the sense that the new arrangement, apart from dealing with trade, should seek to help the countries of the region to meet their development goals.

Regarding the EU-ACP:

- The maintenance of the Sugar Protocol for as long as possible; financial support for diversification out of sugar for chronically uncompetitive regional producers as well as for the improvement of producers with the potential to compete.
- The best possible preferential terms of access for bananas and continued financial and technical help for diversification and adjustment.
- Financial Support for the rum and rice industries to improve their efforts.
- Some form of compensation for import revenue loss and assistance with fiscal restructuring.
- The duration of transition periods, product coverage, asymmetry in the application of tariff reductions for certain sensitive sectors and products taking into account the measures envisaged under the FTAA and the special arrangements that exist for

the OECS in the Caribbean Community Treaty.

Regarding the developmental goals:

- Recognition of the vulnerability of the Caribbean's small fragile economies and their need for special and differential treatment.
- Meaningful levels of financial support to address in a sustainable way some of the supply-side constraints outlined above.
- Special arrangements for Haiti, the only UN recognized LDC in the Caribbean where macroeconomic reform has stagnated and infrastructure is in "a deplorable state". A transformation of the Haitian economy would facilitate its economic integration into the Caribbean.
- The elimination of residual barriers on new non-traditional exports and support for their promotion and marketing.
- A Special Arrangement on Services that would enable the region to build on its strength in this area.

The World Bank survey to which I have already referred has stated that "*the fundamental challenge facing Caribbean nations is to create political, social, and economic conditions conducive to the enhanced well-being of a population that is projected to increase from 34.2 million in 2000 to 41.8 million in 2020 (including Cuba). This has to be achieved while coping with a changing international environment (i.e., trade liberalisation and the erosion of preferences, globalisation of markets, rapid technological change), with pressures on the fragile physical environment, with a high risk of natural disasters, and with the disadvantages of small size and an underdeveloped physical and institutional infrastructure.*"⁶

As we approach the start of negotiations on a new trading relationship with the EU the question that must be asked is: Will an Economic Partnership Agreement help the Caribbean to face up to the challenge of creating political, social, and economic conditions that will enhance the future well-being of the region's people? In short, will it help to eradicate poverty and assure the Caribbean a place in the world economy?

⁶ World Bank (2000) "Towards a Caribbean Vision 2020: A Regional Perspective on Development Challenges",

4. WHICH ROLE FOR THE NEW ACTORS?

CIVIL SOCIETY PARTICIPATION IN THE COTONOU PROCESS

BIBIANE MBAYE GAHAMANYI

On the status of the new actors in Economic Partnership Agreements - participation of civil society in political dialogue

Development co-operation between the EU and ACP countries used to be a playground anxiously guarded by states and governments. Consequently hardly anything about the state of co-operation was known to the general public and to the actors of the development community in general.

Since the Green Book was launched in 1996, the European Commission has clearly indicated its commitment to broad participatory approaches in development co-operation, a principle that was later accepted by ACP-States and established as a fundamental principle in the Cotonou Agreement.

For the very first time, civil society, together with other non-state-actors, has therefore been formally invited to participate in the implementation of the agreement. The parties have recognised the necessity to integrate non-state-actors in the definition, implementation and evaluation of development strategies and programmes and to include them into the political dialogue (Art. 6 and Art. 8.7). This means that their role would not be limited to the implementation of development projects anymore. Non-governmental actors should also have access to information, to direct EC funding and should receive support for capacity building.

Meanwhile, the lack of institutionalisation of the participation process in the agreement itself could be a serious handicap, which could be worsened by the

non-democratic nature of certain political regimes within the ACP as much as by the missing expertise and experience of state and non state actors due to the novelty of their role in a participatory approach.

ACP civil society organisations have reaffirmed their conviction of the necessity to adopt a pro-active approach to assure their participation, so that the institutionalisation process of the dialogue between civil society and public powers, started by both sides, is on the way. Many dynamics of this process are going on at the same time:

Construction of national, regional and global representations:

At the national level, ACP civil society organisations (CSO) are organised in platforms, which group together different categories of organisations, associations and individuals according to their different sectors of activity. A national focal point (most often a collective, an NGO-network or an important trade union) will assure the co-ordination of activities of the platform. The same principle is at work at the regional level. In West Africa for example, the regional platform is constituted by the national focal points. The regional platform also has its own regional focal point. Finally, at the global level, the ACP Civil Society Forum, which was established in October 1997, is the place for co-ordination and dialogue of ACP CSO. The regional focus points are co-ordinating the activities of the ACP Civil Society Forum.

Networking and building of strategic alliances

In order to strengthen their operational and strategic capacity in different domains and sectors of activity, the CSOs either create new networks on specific topics or integrate themselves in already existing networks. The Africa Trade Network (ATN) is one example for such a network, which many African CSOs have joined, when the preparations for trade negotiations between ACP and the EU were started.

Participation in the Cotonou implementation processes and policy advocacy

As the implementation process continued, the civil society took several opportunities to play its civil role by participating in different implementation processes of the Cotonou Agreement. The national platforms inserted themselves into the exercise of programming with more or less success according to the different contexts. On the other hand, the ACP Civil Society Forum (and e.g. the Brussels-based Cotonou Monitoring Group) participates in various events and fora to influence conclusions drawn. Moreover, the forum favours the process of appropriation and of exchange of experiences between civil society actors by starting public debates on the Cotonou Agreement in general as on actual topics of the process. During the World Social Forum in Porto Alegre, the ACP Civil Society Forum organised a workshop on Cotonou issues, which was well attended. Another example of such activities is the promotion of exchange between peasant movements both in the South and North to express their preoccupations towards the trade negotiations and questions relating to the trade issues.

ACP – EU official initiative for the participation of the civil society in the implementation of the Cotonou Agreement: The Brussels Conference and follow-up

In July 2001, the ACP Secretariat, the Belgian Presidency of the EU, and the European Commission facilitated the organisation of an ACP civil society conference in Brussels. At the conference a declaration and an ACP civil society Plan of Action were adopted by some 150 CSOs. The Belgian Presidency and the ACP Secretariat have meanwhile presented this Plan of Action to the ACP - EU common institutions for its endorsement.



During the presentation on civil society participation within the Cotonou framework. From left to right: Malcolm Damon, Lingston Cumberbatch, Interpreter, Bibiane Mbaye Gahamanyi, Peter Eisenblätter (chair) and Klaus Schilder

In conclusion, ACP civil societies are active and present in the implementation of the Cotonou Agreement, but the degree of participation is still minimal. We are still waiting for a clear sign of engagement by the EU and ACP institutions in favour of an institutionalisation of the political dialogue in all the domains and on different levels, as much as we are still waiting for an elaboration on the modalities of participation.

Preparation for the forthcoming trade negotiations between ACP and EU - stakes and challenges

As everyone knows, the formal ACP - EU negotiations on Economic Partnership Agreements (EPA) will begin in September 2002. The objective of these EPAs is to open ACP markets and to create free trade zones with the European Union. These negotiations present different challenges to ACP countries:

- **Power relations in ACP-EU negotiations** for the conclusion of EPAs are clearly tilted towards the EU. First of all, ACP countries are not convinced of the necessity to conclude EPAs and would like to keep up the status quo (which means the system of non-reciprocal trade preferences). All the other alternative options wished for by the ACP would unilaterally be left for consideration and decision by the EU. Secondly, there exists a risk, that the strongest party forces its schedule of liberalisation, according to its overall policy interests.
 - **The geographic choice of regional configurations**, under which negotiations would take place, will bring on the challenge of regional integration. Options other than regional ones (all ACP together or country by country) seem to be put aside, the EU has clearly indicated its preference for regional agreements and the text of the Cotonou Agreement reaffirms this option: The "economic and commercial co-operation is founded upon initiatives of regional integration" (Art. 35.2). Further, the West- and Central-African regions have already indicated their preference for the regional model. However, the option of 'all ACP countries together' remains important for certain countries, as Mauritius and the Caribbean. The different situations and regimes (e.g. LDC and non-LDCs) within one region and consequently the diverging interests will make harmonisation of positions difficult and could lead to disintegration of already constituted regional ensembles. It seems we are approaching negotiations in a two-phased approach: the first round will define the principles and a second round will be concerned with the concrete status of commercial relations. The first round would take place with all ACP members, while the second would be run by different geographically adapted configurations.
 - **The setting of priorities and of the negotiation mandate** comprises challenges of purely political nature as much as challenges tied to development strategies and to the implementation of multilateral agreements, e.g. within the WTO and its Doha Ministerial Declaration. The political challenge now is the establishment of democratic and transparent decision making processes. We must evade any process, in which negotiations are made on an ad hoc basis. The elaboration of positions and policies must rise from a process of consultation and participation which include national institutions (especially the national parliaments, and the economic and social committees), different categories of the civil society (including research centres, small producers, women, trade unions, peasant movements etc.) as well as the private sector.
- Several important and strong recommendations have already been expressed by the civil society; foremost about the following major preoccupations:
- To avoid any phenomenon of disintegration, possibly resulting from negotiations of EPAs, centred on different geographical configurations.

- To reinforce regional processes of integration such as the Africa Union.
- To assure food security, employment protection, the refusal of economic reforms, which would produce more poverty (like certain privatisations), the necessity to develop internal markets and intra-regional trade, the necessity to maintain coherence with other negotiations by refusing to proceed beyond reservations expressed for example in the Doha Declaration and to exploit its concessions which would allow to maintain non-reciprocity.
- Reinforcement of the negotiation capacity of ACP countries. The weakness of ACP negotiating capacity, as compared to the institutional resources of the European Union, is not at all a mystery. The current situation in which one of the parties (the EU) has decided to release funds to reinforce the other parties capacities and therefore to assist them with their negotiations, is rather worrying. These funds, which are available from now on until the first trimester of 2002, will help - among other things - to conduct first impact studies on the proposed EPAs. Even though the time might be somewhat short until September 2002, it is necessary to conduct these studies and research in a systematic manner in order to evaluate the different scenarios / options, which need to be considered along the different negotiations steps. Therefore, it is necessary to create dynamics, which imply different national and regional expertise and competence.

The role civil society can play - challenges to overcome, the role of the ACP Civil Society Forum and elements of a common approach of ACP and EU civil societies

The political stake for the ACP civil society is to assure participation of all actors in the field of development. The principal challenges actually to overcome are, on one hand, to push for the political will to begin a democratic debate with the people about positions and policies. On the other hand, to assure the consideration of major priorities implied in the concept of an economically and socially sustainable development, in order to augment these priorities in the definition and mandate of the negotiations. Other challenges are of an organisational and operational kind, so as to achieve an effective participation.

The different steps in participation and the efforts to institutionalise the dialogue between civil society and public powers, mentioned above, do not yet benefit from the support of the later. The endorsement of the ACP Civil Society Action Plan by the EU institutions is crucial not only in order to permit the mobilisation of the resources, which the civil society needs to structure and to reinforce itself, but also for the political recognition, which this would imply.

Nevertheless, the ACP Civil Society Forum has started a programme of activities, following the agenda of its Action Plan. Several of these elements are already in the process of implementation. The elements of the programme are the following:

- Reinforcement of the national platforms working on the implementation of the Cotonou Agreement. This step puts an emphasis on the necessity for its better structuring and for an intensified lobbying for its political recognition by the official side. The national platforms need to identify their partners in the administrations and state institutions, with

which they will have to work in a clear and systematic manner.

- Identification of organisations, which could create national platforms, where they are not yet existing. To start such an organisation process, seminars about the new actors and their participation as well as on the Cotonou provisions itself should be held at the national level.
- Enlargement of the forums basis to other non-state actors.
- Elaboration of a concept paper describing the structure of the ACP Civil Society Forum, being a book of tasks and functions.
- The definition of a precise working programme on trade in order to prepare the CSOs to participate in trade negotiations. The implementation of the trade programme has begun in West Africa in October 2001.
- Preparation and organisation of a strategic planning meeting in order to fine tune scenarios concerned with future structure; to specify and operationalise the Action Plan by defining missions, objectives and better formulated activities and to propose an organisation, which must be more operational in its specific working fields at the national, regional and global level.
- Preparation of an ACP civil society meeting, which must adopt the definitive structure of the Forum, its working organisation, and the plan of activity for the next two years.
- Elements of a common approach of ACP and EU civil society towards the trade negotiations contain first of all a common vision and a definition of an agenda and of common strategies for implementation. Common tools with shared responsibilities, like working groups on specific topics can be set up, if needed. The use of existing frameworks is to be encouraged.

To assure meaningful participation of the civil society in trade negotiations, the principal domains of collaboration remain: Information, policy advocacy, re-inforcement of the political dialogue, research and production of analytical and position documents.

5. EUROPEAN TRADE POLICY FOLLOWING DOHA INCREASINGLY REGIONAL?

INITIATIVES FOR A BALANCED AND SUSTAINABLE PARTNERSHIP

EVITA SCHMIEG

In the program, the organisers posed the question whether the EU has a tendency to regionalism. The answer clearly is "yes", but not increasingly after the Doha WTO Ministerial, since the EU always has had this tendency. And since the EU itself forms the most successful regional integration initiative, it can be said, that the EU has good reasons to pursue this approach.

However, a short review shows that from the beginning of the Uruguay Round the US and EU kept their doors open for regional alternatives to multilateral negotiations. And in the end it became clear that this was not about alternatives but about complementary approaches since on a regional level a number of issues might be easier to realise than on a multilateral level. This is especially true for objectives such as deep integration, which concern the reduction of trade barriers as well as the formulation of common rules, for example in the fields of investment, environment, norms and standards etc.. Equally, the need for economic and social adjustments is smaller, if integration proceeds on a regional level first.

It is for these reasons that during the 1990s more and more regional initiatives have been created world-wide. Even the World Bank, an organisation that privileged uni- and multilateral liberalisation and tried to limit regional initiatives until the 1990s, finally concluded one of its publications with rather resignation by saying "*Regionalism is here to stay*".

Therefore, the EU now is confronted with the following question: "*How do we*

design a world trade system in which regional and multilateral initiatives exist parallel to each other?"

The basis for such a world trade system is a strong World Trade Organisation (WTO) with rules that work. WTO rules must protect the interests of all its members and have to reflect real economic conditions. Since we cannot meet the actual challenges with rules of the past, this requires the constant adjustment of WTO rules to new developments.

The Doha development agenda (the WTO Ministerial declaration) makes it very clear: Developing countries have a lot to catch up with in the world trade system. According to the text of the Ministerial Declaration, the interests and needs of developing countries are thus at the heart of the new WTO round. Now these words must be followed by appropriate actions.

In this context, it is of great importance that the Doha promises for more trade related development co-operation are fulfilled. The ambitious agenda for a new trade round requires a multilevel support of developing countries, in particular in the following domains:

- **The analysis of developing countries economic situation and the potential impact of new WTO rules.** This analysis must lead to policy formulations.
- **The conduct of negotiations.** Insufficient negotiating capacities often aggravate developing countries problems to pursue their inter-

ests. Here, they must be supported. Similarly, it must be assured that negotiations in Geneva are carried out in a transparent manner, so that the effective contribution of developing countries interests is not hindered. With regard to the negotiating capacities I would like to add another remark: The Doha development round is already demanding enough. If, for ACP countries, we add the negotiation of Regional Economic Partnership Agreements with the EU, the challenge becomes immense. It is true that synergy effects arise from parallel negotiations concerning the economic analysis and the formulation of national positions. However, the negotiation process itself ties up additional resources. Here, additional support from the EU is needed, as already build-in into the Cotonou Agreement.

- **Furthermore, developing countries need to be supported in the implementation of WTO commitments.** This applies to the implementation of cost-intensive reforms as well as to social adjustment costs arising from economic restructuring.
- **The "more traditional" aspect of support for supply-side capacities.** Most often, market access is not the main problem, but the fact that neither goods produced in developing countries meet the standards of spoiled consumers in industrialised countries nor do producers have sufficient market information.

At the moment, the WTO is discussing a so-called 'Doha Development Fund' which shall support developing countries in addition to bilateral development cooperation. We, as other donors, are currently mobilising additional resources for this new fund. In this context, we believe that it is important to approach the private sector. After all, the successful conclusion of negotiations and the inclusion

of the new issues in the upcoming negotiations, in particular, are of vital interest of the European economy. In fact, of even greater importance than for development policy. Consequently, the private sector should offer own financial resources or other means of support for developing countries during the negotiations.

Making the Doha development agenda a reality means to further open markets for agricultural and agro-processed products from developing countries. Export subsidies must be abolished as soon as possible because of their damaging effects on development. Liberalisation in the textile sector must proceed in an accelerated manner. And it has to be guaranteed that after the final integration of the textile sector into WTO rules in 2006, progress in liberalisation will not be undermined by the application of general WTO safeguard provisions.

Further market liberalisation is important and it is the traditional WTO focus. However, I see a much bigger challenge coming about in the formulation of the new "rules of the game". Since the Uruguay round was launched, the traditional question of market access has been continuously lost significance. Meanwhile, the challenge to create a new international rules-based system concerning a wide range of issues became more central. Within the Uruguay round, new areas covered trade in services and the protection of intellectual property rights. In the Doha development round, investments and competition are key subjects, in addition to further developing existing rules. These newly established international rules must take the needs and special constraints of developing countries into account from the very beginning. It is the key challenge to construct new international rules that are development-friendly. Regarding TRIPs, this has not yet been achieved. The World Bank report on "Global Economic Prospects", published just before the Doha conference, once more underlined very clearly that TRIPs exclusively serves the trade-related inter-

ests of industrial countries, at least in the short term. In the coming period, developing countries are confronted with high implementation costs. As we are dealing with this problem since the Uruguay round, the coming negotiations must also be used to seek solutions for the numerous problems developing countries face within this agreement.

This should not be the way to deal with the new issues! Therefore, I place great emphasis on the creation of rules and regulations that integrate the notion of 'special and differential treatment' for developing countries at its core. However, I'm hesitant to use terms like 'special' and 'differential' in this context since they imply exactly what I have not in mind: The challenge ahead is to design trade rules in such a way that they do not regard development considerations as the exception but as the general condition which should form the basis for all rules. Since the majority of WTO members are developing countries this should be self-evident.

In this context, one rule is most important. Under GATT article XXIV, exceptions from most-favoured-nation-status are allowed for free trade areas and custom unions under certain conditions:

- The external protection – by means of tariffs and other trade barriers – must not be raised as result of an FTA
- Regional trade liberalisation must proceed within "*a reasonable period of time*". In Marrakech it was agreed that this should be a 10-year period which could, in justified circumstances, be extended for a longer period (which should not be indefinite but range from 12 to 15 years).
- The reduction of trade barriers should comprise "*substantially all trade*". There is no clear definition of what this term should cover. However, there is general agreement that

important sectors may not be excluded from the liberalisation process.

The first condition is self-evident under WTO rules. Regional integration as a strategy for import substitution behind high tariff protection in practice failed already during the 1970s. Today we are dealing with integration initiatives which consider regional integration as preparation and stepping stone for an integrated global market. Wherever possible, external tariffs will be reduced parallel to internal liberalisation progresses.

Much more ambitious, however, is the third condition calling for the liberalisation of substantially all trade under the EPAs framework within a period of 10 years. In particular, taking into account the situation of most ACP countries which are not LDCs. On these two points - sectorial applicability and length of transition periods - I think it would be useful to search for more realistic solutions in ongoing WTO-negotiations. It would be unsatisfactory if the WTO would have to grant consecutive waivers to allow for the continuation of these exceptional regulations. Instead, within the negotiating framework it should be possible to arrive at a definition for article XXIV that better reflects the situation of developing countries, and LDCs in particular, and thus creates a sound base for economic agreements between the EU and ACP countries.

To come back to the main question: Regional initiatives must be embedded into a strong multilateral system. The multilateral system must reflect the realities and should not see them as exceptional circumstances. If these conditions are met, they form a sound basis for economic and social development, in which regional initiatives and the multilateral system complement one another.

6. COTONOU IN ITS REGIONAL AND MULTILATERAL CONTEXT

CHRISTOPHER STEVENS

Background

Breaking out

Discussion of a post-Cotonou trade regime between the EU and the African, Caribbean and Pacific (ACP) countries is too often sterile. Many of the points that can be made have already been put numerous times, so the arguments for and against are well known. For *detailed* discussions to move forward it must be informed by more empirical evidence which, in turn, can only partly be provided in advance of initial negotiating positions.

We need to break out of this sterile reiteration of established positions by setting the discussion on a different plane. What role could a new trade agreement play in achieving the stated Cotonou objective of “*the smooth and gradual integration of the ACP States into the world economy ...*” (EU-ACP 2000: Article 34:1). Having established the underlying objectives, in what ways might they be promoted by Economic Partnership Agreements (EPAs) and, by the same token, what potential dangers lurk along this route? In particular, how might EPAs contribute towards the EU’s goals with respect to the World Trade Organization (WTO) both on market access for goods and in the new areas of trade policy?

What can civil society organisations like terre des hommes, Weed and the Friedrich Ebert Stiftung do to advance such a debate, and how can discussions like those at the Berlin conference contribute? The answer is that they can contribute a lot. The period during which the EU’s initial negotiating mandate is

adopted (or made more specific if the original is bland) is one in which Northern civil society should seek to influence the agenda by raising the awareness of both the European institutions and national governments of the issues at stake. Whilst the Commission has the sole operational responsibility to negotiate, it must do so on the basis of a mandate that is approved by the member states. And in their approval process the member governments should be sensitive to the views of informed opinion.

This paper sketches some issues of concern. Sections 2–4 elaborate the issues but, to set the scene, this introductory section rehearses briefly the state of play in the areas that most commonly feature in discussions on post-Cotonou trade regimes. The EU proposed that the Lomé trade regime be revised during its preparations for the negotiations at the conclusion of Lomé IV. The arguments for and against a change were set out in the Green Paper (European Commission 1997). They included the points that a new regime should do more to foster the integration of ACP states into the world economy and should be more easily defensible in the WTO.

It was not possible to agree such a new regime in the Cotonou Agreement. Instead Cotonou extends the Lomé trade regime, but with the proviso that negotiations must commence this year for a successor regime that will come into effect in 2007. Hence, debate over the pros and cons of the EU’s preferred option - regional, reciprocal trade and development agreements - has been under way for over five years, but without making substantial progress.

In April 2002 the Commission sent a draft mandate to the member states. It was couched in rather general terms. The current period is a very important one for articulating informed opinion. Ideally, the mandate should be made more specific before it is adopted. But even if this does not happen, greater specificity will need to be added over the coming months. In either case, it is important for civil society to influence the decision-making of the member states.

The focus on reciprocity

Much of the discussion, especially in the ACP, has focused on the proposed reciprocity of the new EPAs. There are two reasons for this:

- the ACP liberalisation required for reciprocity is bound to have adjustment and fiscal costs for these states;
- the EU has not felt able to put forward in any detail other specific innovations for an EPA owing to a combination of the political sensitivity of any further extension of EU preferences on market access for goods; and a lack of precedents (and probably political sensitivity) on possible preferences in areas other than merchandise trade access (such as services, anti-dumping, competition policy, investment, etc.).

ACP concerns over the adjustment and fiscal effects of liberalisation are undoubtedly valid, but the severity of the problem cannot be established in advance of further information becoming available on the membership and scope of any EPA. Among the key pieces of information required to make a firm assessment of the cost of liberalisation are:

- the proportion of trade to be covered by the reciprocity commitment;
- the implementation period for reciprocity;
- the membership of an EPA;

- parallel events.

A preliminary estimate of the first two bullets can be made by using a relevant example such as the EU - South Africa Trade and Development Agreement (TCDA). This applied liberalisation to an average of 90 percent of the goods currently traded, with an implementation period of up to 12 years. If the same approach were adopted in an EPA, ACP states might be asked to liberalise access to their market on goods that currently account for, say, 85 percent by value of their imports from the EU, and to do so over 12 years.

But even this assumption does not deal with the third requirement - the membership of the EPA. Would the 85 percent rule apply to total regional imports from the EU, or to the imports of each country in the group? If the former, then the range of sensitive products that could be excluded from liberalisation would be determined both by the current commodity pattern of regional trade with the EU and by intra-regional negotiations (since each EPA member would, presumably, attempt to exclude from liberalisation its most sensitive products rather than those of its neighbours).

Finally, the incremental costs of an EPA will depend upon what happens in parallel fora. The effects in the Southern African Development Community (SADC), for example, will be influenced by the speed of intra-regional liberalisation and the treatment of EU originating goods imported into members with low tariffs. The incremental effects on all ACP states will be affected by what happens in the WTO.

In brief, it is not yet possible to provide a definitive assessment of costs (let alone an economic analysis of their effect on the ACP economies, which might be judged to be beneficial). None the less, there is a clear and urgent need for a set of 'what if' analyses that identify the potential product exemptions from EPAs of different memberships. Whilst such analyses would be only illustrative, they

might help to ease the passage of early negotiations by calming fears about the potential scale of liberalisation effects.

The scope for EU liberalisation

The scope for further improvements in the EU's market access regime is limited by the commodity composition of ACP exports and the political sensitivity of further liberalisation on Common Agri-



Participants of the evening panel discussion on European regional trade policy. From left to right: Chris Stevens, Morgan Githinji, Evita Schmiege, Thomas Fritz (chair), Kingsley Ofei-Nkansah and Karl-Friedrich Falkenberg

cultural Policy (CAP) products (and for significant alleviation of the rules of origin for sensitive, labour-intensive manufactures). The EU has pointed out for a long time, correctly, that a very high proportion of the goods actually exported by ACP states to the EU enter duty free. Given the supply constraints in many ACP states, the only substantial product area in which useful additional market access preferences could be given is agricultural goods covered by the CAP. The only other significant way in which ACP export diversification could be encouraged would be by deliberately reducing the processing requirements needed to fulfil the rules of origin. This would be effective only if more of the processing could be done in a non-ACP state and less in an ACP one.

The early Commission proposal (dropped from the mandate request submitted to the member states in April 2002) to extend 'Everything but Arms' (EBA) access to all ACP states would have addressed adequately the first objective of extending product coverage. Ideally this proposal should be reintroduced before the mandate is approved; failing that, it should be introduced at an early stage in the negotiations.

To prepare the ground, it is important to assess in advance whether or not an extension to all ACP states of EBA access would significantly enlarge the range of products, in which the ACP have a supply capacity, that they could export to the EU and which would pose a competitive threat for European producers. By the same token, it would be helpful to assess the implications (for both the ACP and the EU) of applying Lomé rules on cumulation to EBA products originating in ACP states (i.e. to allow the less onerous Cotonou rules to apply to cumulation between ACP states but not with non-ACP least developed states).

The objectives of EU-ACP trade policy

What is the fundamental objective of EU-ACP trade policy? Are EPAs simply a means to this end, or do they/should they have characteristics that are desirable ends in their own right? These are not simply academic questions. What is certain about the forthcoming negotiations is that much remains uncertain. We do not know, which ACP states will agree to negotiate EPAs, or in what regional formation; the terms of the EPAs; what will happen in other fora (notably the WTO) during the period of the negotiation and implementation of EPAs.

It is entirely possible, therefore, that the feasibility of different configurations will change over time. A prudent approach is to set out clearly: The objectives that are to be furthered by any post-Cotonou Agreement; the instruments

that would tend to support such objectives, and those that might be undermining, the second-best features of an agreement that would be acceptable if the first-best instruments cannot be achieved.

This would allow the mandate to evolve over time to deal with changing circumstances. The more fully that the initial mandate foresees the range of possible desirable outcomes, and provides an enabling framework, the more easy will it be to achieve such flexibility.

To use the, now famous, question of Jagdish Bhagwati, in what way might EPAs be building blocks of a multilateral trading system and how might they become stumbling blocks? The short answer is that EPAs would be building blocks if they encouraged ACP states to do things that are economically and developmentally desirable, but would not (necessarily) have occurred otherwise and will not act as a barrier to future multilateral changes.

Potential positive effects of EPAs

There are a number of plausible reasons why EPAs could have such effects. There is general agreement among EU governments that it is broadly desirable for ACP states to have lower, more uniform trade barriers, and for these to be applied in a consistent fashion. In most, if not all, countries trade policy results from the interplay of lobbies. By making (valuable) market access to the EU conditional upon a more liberal, rules-based trade regime, the EU could tip the domestic balance in favour of reform.

It would be less easy to produce this effect in the WTO, where the EU focus would necessarily be dissipated by its other negotiating objectives. There are other ways, too, in which an EPA might achieve more substantial results than would be possible multilaterally. These stem from the fact that an EPA would provide a framework for both finance and trade.

There are two ways in which the finance - trade link might be helpful. One is that it will raise the political profile of trade policy in some ACP states. One reason for the low-level role of many ACP states in the WTO (apart from general constraints on administrative capacity) is that trade policy lacks a high domestic political priority. Typically aid is of more central concern to governments. By linking the two, the EPA negotiations may raise the profile of trade policy and provide reformers with the critical political backing that they need.

In addition, an EPA can provide financial and technical assistance both to improve trade analysis and negotiating capacity and to help with the adjustment costs of liberalisation. A significant criticism by developing countries of the WTO system is the fact that it is limited to trade rules and that any substantial technical or financial assistance must be provided by other bodies whose actions cannot be directed by the WTO.

Potential negative effects of EPAs

Whilst these are perfectly plausible arguments, it is equally possible to identify potential ways in which the EPAs might prove to be stumbling blocks. Whether or not they tend in one direction or the other cannot be predicted in advance. A prudent negotiating strategy would allow the proposed instruments to change in the light of unfolding events.

The most obvious potential stumbling block would be if EPAs become trade diverting rather than creating. They would be directly trade diverting if they shifted ACP imports away from more competitive but less preferred sources. And they would be indirectly trade diverting if they created lobbies, structures or rules that became obstacles to multilateral rule-making or liberalisation.

The argument about the beneficial link between aid and trade also cuts the other way. Much adverse comment has focused on the alleged potential use of aid leverage to force undesirable (or, at

least, politically unsustainable) trade policy changes on governments. Similarly, the argument that EU pressure might be the catalyst that finally brings about regional integration can be offset by the fear that Europe will simply exacerbate intra-regional tensions, slowing down the process or even causing its collapse. For example, it may prove to be impossible for Botswana, Lesotho, Namibia and Swaziland to be in the same EPA as the other SADC states, since their regime for imports from the EU cannot be significantly different from that already agreed by South Africa, with which they are in a customs union. The result of the EU's initiative, therefore, may be to fracture rather than reinforce SADC.

Whilst it is not possible to predict which of these two scenarios will be played out, it may be possible to identify indicators that suggest the way the wind is blowing. This would allow the EU to modulate its approach in the light of circumstances to maximise the likelihood that the final outcome will be of the building block rather than the stumbling block variety.

Such indicators will need to be devised with care, but an initial list designed to stimulate discussion at the seminar is as follows:

- EPAs should not create new preferences in ACP states and, hence, any liberalisation should be integrated as closely as possible with multilateral change. Indeed, one approach would be to link specifically the provisions for ACP liberalisation to their commitments in the WTO Development Round.
- The evolution of ACP regional responses should be monitored with care, and the EU should avoid any heavy-handed attempt to *impose* a region on unwilling states for the purposes of EPA negotiations. The Commission is at great pains to deny that it wishes to impose anything, but there are both active and passive

variants. Raising ACP fears that they will lose market access if they do not form EPAs is a form of passive imposition. Avoiding this would require the EU to have an explicit fall-back position that offers advantages to those ACP states willing to negotiate within a regional group (in order to provide support for regional integration) but that offers too an acceptable alternative route if the regional one proves impossible.

- The new agreements should increase rather than decrease the scope for intra-ACP trade. A corollary is that the provisions for cumulation under the rules of origin must be at least as good as those in Cotonou, if not better.

Regional options

Of the indicators listed, the one with most immediate operational significance concerns ACP sub-regions. Despite the five years of discussions that have occurred since the publication of the Green Paper, the ACP have not yet agreed a coherent position on their regional preferences. As is well known, Africa is littered with failed attempts at regionalism. It is clearly of critical importance that the regions with which the EU negotiates are genuinely committed to integration. Indeed, the whole feasibility of the EU's approach is conditional upon the speed and success of regional integration schemes in ACP states, which are largely outside its control. It is important to take a view, therefore, that is as objective as possible on the real likelihood of most ACP states agreeing and implementing substantial integration over the next decade.

The Commission's apparent preferences

Under the Cotonou Agreement it is the prerogative of the ACP to decide upon the membership of the groups that may engage with the EU to negotiate EPAs. However, it is unrealistic (and arguably

undesirable) for the EU to ignore the matter. There are, as yet, no agreed details of an ACP position on EPA eligibility, but the Commission has circulated its initial views in a discussion paper (European Commission 2001).

The Commission's underlying rationale is that EPAs should promote genuine economic integration. Accordingly, "*a high degree of economic integration within the ACP is desirable...*". Whilst "*requiring deep integration between the ACP as a pre-requisite for negotiation would ... not be practical ... EPAs should aim, within reasonable timeframes, to build on these principles...*" (European Commission 2001:6).

This establishes a preferred order of priority that ranks existing regional organisations in terms of their inherent suitability as EPA partners. A basic condition is that the negotiations must take place in a single setting and lead to a single agreement. Additionally, the order of preference is as follows:

- Customs unions „*offer the best conditions*" (European Commission 2001:9).
- FTAs should also be considered provided either that they have already been implemented or that legally binding interim agreements exist and are being effectively implemented.
- Regional economic integration initiatives lacking legally binding interim agreements or effective implementation should not be considered unless all members agree to negotiate with the EU in a single setting with a harmonised position and the aim of a single agreed plan and schedule. In cases where some members of a larger FTA belong also to a smaller customs union it is up to the ACP to decide which of the two should negotiate the EPA. If two or more regional groupings have overlapping membership, the members should normally decide which one agreement they wish to use as the

EPA negotiating umbrella. However, negotiations could occur with more than one group if each is willing to harmonise closely its negotiating position with the other(s) so that the negotiations take place in one setting with all ACP states having the same access arrangements (European Commission 2001:11).

According to the discussion paper "*there is no legal reason which prevents the negotiation of an EPA with a free trade area which has non-ACP countries as members*" (European Commission 2001:11). The EPA will simply not apply to the non-ACP state. But this may lead to trade diversion. This is especially likely in cases where the EU already has a trade agreement with the non-ACP state (as would be the case, for example, with both Egypt in COMESA and South Africa in SADC). Consideration should be given, therefore, to bringing the non-ACP state into the EPA.

The Commission's view is that bilateral EPAs should not be allowed to weaken regional economic integration. The non-paper states that ACP countries which are members of a customs union or FTA through which they would be eligible to negotiate with the EU "*should ... not be eligible for such negotiations on an individual basis.*" (European Commission 2001:12).

Now that some coherent parameters have been put forward (albeit in a discussion paper), it would be helpful to assess the number of existing sub-ACP accords that currently fulfil the requirements, or could realistically be expected to do so by the end of 2007. This would help indicate whether or not a fall-back position would be required only for a minority of ACP states or for the majority. Such an assessment ought to inform the phraseology in the mandate.

A multi-tier agreement

One way in which the mandate could retain flexibility would be to envisage specifically the possibility of a multi-tier

agreement replacing the Cotonou accord. It is natural to think initially of a successor to Cotonou being in the form of a single, comprehensive document. The ACP and the EU are familiar with such an arrangement because the Lomé Conventions have provided an overall package and are of such longevity that they have been a major influence on the thinking of most policy-makers and trade actors. This leads to the conclusion that each regional EPA would be a self-contained document, and that each might have unique features.

But it does not follow that this is the only approach, or that it is the most desirable in the new circumstances of the twenty-first century. There are provisions of any post-Cotonou accord that should remain common to all ACP states and for which it is therefore not sensible to seek differentiation. The potential trade diverting, stumbling-block effects of losing all-ACP/EU cumulation under the rules of origin have been noted in Section 2 of the draft EU mandate. One approach would be to have identical (and cross-referenced) provisions in each EPA, but another would be to have an umbrella accord covering all EPAs and dealing with common provisions.

To determine which approach appears to be the more practical, it is important to distinguish between the areas in which similarity of treatment among all ACP is desirable and those in which differentiation may not only be possible but also desirable in the sense that different states/sub-regions have different interests to advance. The principal areas in which the ACP have a strong similarity of interest are:

- maintaining a contractual relationship with the EU;
- establishing adequate dispute settlement procedures;
- ensuring the continuation of current access levels for non-Protocol merchandise products;

- maintaining full regional cumulation under the rules of origin.

In none of these areas is there any obvious gain to ACP states or sub-regions in negotiating separately. This suggests that any agreement covering contractuality, dispute settlement, the maintenance of current border access on non-Protocol merchandise exports, and rules of origin should be jointly negotiated. And if it is jointly negotiated, there appears to be no *a priori* reason why a single umbrella agreement would be less satisfactory than identical texts in each EPA.

The principal areas in which there may be good, objective reasons why ACP sub-regions/states will need to negotiate separately are those that are covered by the existing protocols (which are of concern only to the beneficiaries) and some of the new areas of trade and services (dealt with in Section 4 of the draft EU mandate). In particular, if any services agreement follows the WTO precedent of a positive list, it will require each state/sub-region to produce its own set of offers and requests. Since these are likely to differ, there may be good practical reasons why the negotiations should take place separately. And, if they take place separately, and if the pursuit of the goals described above are not compromised, then there is no obvious reason why there should not be separate agreements.

The idea of a multi-tier agreement also has practical merit in terms of getting the negotiations off to a good start. Negotiations could commence in earnest in September 2002 on the scope of the umbrella accord even if EPA memberships have not been finally established. It would also avoid politically divisive differences of interest emerging between ACP sub-groups on some details by allowing regions, *ad hoc* sub-groups of like-minded states, or even single states to negotiate bespoke protocols in areas of mutual interest.

New trade issues

The erosion of old preferences

The Cotonou preferences have a limited shelf-life. Even if they were not due to expire in 2007, it is likely that they would lose much of their value to the ACP by the end of the decade or thereabouts. Preferences are being eroded by EU liberalisation (both multilateral and improved preferences such as EBA). The decision in the Uruguay Round to phase out all MFA quotas by the end of 2004 will remove the most important policy-induced stimulus to investment and production in the clothing/textiles sector. Although a tariff preference will remain, this is likely to be reduced over time.

In the medium term, the reform of the CAP is likely to lead to lower prices for the products covered by Cotonou and its Protocols. Although, in due course, the negative effect of this change on the more competitive ACP may be offset by greater opportunities to increase the volume of agricultural exports to Europe, there may be a gap in time between the fall in price and the opening of the market.

The scope for new preferences

Given that most preferences on merchandise trade have a distinct shelf-life, the length of which will be determined by multilateral liberalisation, what scope is there within EPAs to extend coverage to new areas? Such new areas could include trade in services, and harmonisation of trade-related policies such as those on competition, intellectual property rights and process criteria.

An initial question is whether new preferences, if they are possible, are actually desirable. Just as regionalism in goods trade may be either a stumbling block or a building block, the same dichotomy applies to trade in services and in new areas. A clear answer can be given only in relation to specific proposals, but in broad terms there is no reason to as-

sume from the outset that building-block preferences are impossible.

The logic of the argument is that there exists a wide array of impediments to market access that are determined by government laws and regulations, are not fully disciplined multilaterally - and are unlikely to be in the short term, are not covered by the Cotonou Agreement and could be covered by EPAs in ways that would contribute to subsequent multilateral rule-making.

They fall into two main groups: New methods of protecting European producers from international competition, and old-established constraints in areas where international trade is of relatively recent origin and has great future potential. The misuse of anti-dumping actions, unnecessarily onerous sanitary and phytosanitary regulations, and the misuse of safeguards are all examples of new forms of protectionism.

The Cotonou Agreement already contains enabling phraseology on a wider range of possible areas of trade co-operation than is normal in EU trade agreements (see table 6.1). This is both a plus and a minus. On the one hand, it has established that the EPA negotiations could range well beyond trade in goods to cover services, intellectual property rights, process criteria in trade etc.. On the other hand, there are two problems: First the ACP have only the haziest notion of what they might wish to obtain under these headings and second, the EU's practice in agreements with other countries provides very little guidance on what it might be willing to offer.

This makes it very difficult to start a dialogue: Lack of information on the part of the ACP prevents them from putting forward concrete, specific proposals, and a (presumable) unwillingness on the part of the EU to show its hand (since this would affect its negotiating position not only in the Cotonou Agreement but also in GATS) inhibits it from making concrete proposals.

Yet because multilateral disciplines in services and other new trade issues are

Table 6.1: EU agreements and 'new trade policy'

	Provisions on					
	<i>Services</i>	<i>Competition policy</i>	<i>TRIPs</i>	<i>Standards</i>	<i>SPS</i>	<i>Process criteria</i>
Cotonou	Ultimate objective	Strengthened co-operation	Strengthened co-operation	Strengthened co-operation	Strengthened co-operation	Strengthened co-operation
EU–Morocco EU–Tunisia	Ultimate objective	Ultimate objective	—	—	—	—
EU–Poland EU–Hungary	Specific measures	Specific measures	Specific measures	—	—	—
EU–Romania EU–Bulgaria	Specific measures	Specific measures	—	—	—	—
EU–South Africa	Ultimate objective	Specific measures	—	—	—	—
GSP	—	—	—	—	—	Special preferences

much weaker than those in goods, it is reasonable to expect frequent cases in which a limited number of countries are more willing to liberalise trade in services between themselves than they are multilaterally and are also more willing to agree stringent rules on new trade issues between themselves than they are multilaterally.

Many constraints on trade in services are behind the border measures such as laws on essential qualifications, regulations on temporary visas for the movement of professionals, rights of establishment, etc.. Countries that share a common educational/legal/administrative tradition and which do not pose a major competitive threat to each other could find it easier to agree rules/lower barriers to trade between themselves than towards third parties. In a sense, therefore, one might expect the EU–ACP relationship to be a particularly fruitful one for regionalism in services and new trade issues. Provided such agreements did not then become a barrier to subsequent multilateralisation, the regional approach could be a building block.

Moving the discussion forward

The problem is to go beyond such generalities to identify specific cases in which there exist realistic possibilities for trade

to increase but this is (or may in the future be) constrained by governmental or quasi governmental regulations that governments are willing to consider amending.

Studies in specific ACP countries would be needed to identify the first of these - the potential supply of services exports. But a wide-ranging discussion in the EU to identify the extent to which the second and third of these apply could have a doubly favourable effect on the climate of the negotiations. On the one hand it would demonstrate a seriousness of purpose on the part of the EU. And, on the other, it might stimulate those ACP countries with a particular interest in the area to press on with supply-side studies.

The Commission's draft mandate

The draft mandate adopted by the Commission on 9. April 2002 (compare annex) does not measure up very well to the requirements set out in this paper. It is wholly silent on improvements for ACP access to the European market, simply deferring discussion of this until the negotiations. It recognises no alternative regime to an EPA, "*the primary building bloc*" for which is "*the establishment of free trade areas*". On services, the man-

date speaks only of "*a progressive and reciprocal liberalisation of trade*".

Moreover, the draft mandate contains a number of proposals which should ring alarm bells in the ACP. These are as follows:

- It proposes that "*charges having equivalent effect*" to tariffs should be abolished immediately on entry into force of EPAs (i.e. in 2008), and not at the end of a transition period. How many ACP states are aware of the charges they currently impose (such as excise duties, that may apply with differential effect to imported items) that the EU might construe as "*charges having equivalent effect*"? And what would be the consequences of their summary abolition?
- The mandate seeks "*national treatment*" for the EU in relation to trade in goods rather than most-favoured-nation treatment. Again, the implications of this have not been identified by many (any?) ACP states.
- The mandate proposes that all tariff reductions be made from the rates currently applied rather than those bound in the WTO. In other words, the starting point for negotiation of an EPA will be much lower than it will be in the WTO Doha negotiations. This presents both a practical and a policy problem. In practical terms, not all countries' trade negotiators are fully conversant with the current level of applied tariffs, and it is certainly the case that the scope for external assistance to help prepare negotiating positions is limited by the fact that these are rarely published in an internationally accessible form. In policy terms, liberalisation based on applied rather than bound rates makes the issue of safeguards much more important (since ACP states will have lost – from the outset – the leeway to protect themselves from subsidised imports or

import surges by raising tariffs to the bound level).

- The mandate's provisions on safeguards and anti-dumping appear to ignore the concerns expressed by ACP states in relation to import surges for products subsidised by the EU. The section on safeguards refers only to Cotonou Annex V, Article 8; this deals only with the rights of the EU to impose safeguard restrictions, not to the reciprocal rights of the ACP (obviously enough, given that Cotonou does not provide for reciprocity). It may be the Commission's intention that identical rights will apply to the ACP - but since the EU subsidises exports whilst the ACP do not, the safeguard needs of the two groups are different. The Article on anti-dumping appears to limit action to the rights that the ACP already possess under the WTO.
- The mandate proposal also makes a sweeping demand that "*quantitative restrictions and measure have equivalent effect*" be abolished on entry into force of EPAs. Without any qualification, this could be interpreted to cover tariff quotas as well as formal quotas. In other words, it would restrict significantly the scope for modulation of liberalisation through the application of tariff quotas to reduced tariff rates during the initial phase.

In view of the fact that the proposed mandate provides only sketchy guidance to the EU's intentions, it is urgent that civil society organisations ensure that the neglected issues are adequately debated. Since the Commission is negotiating on behalf of Europe's citizens, it is reasonable for the citizenry to ensure that pro-development views are heard in a sufficiently specific and explicit form that they can be taken on board by Europe's governments.

7. TO SIGN OR NOT TO SIGN?

EPAs AND ALTERNATIVE OPTIONS FOR EU – ACP NEGOTIATIONS

PAUL GOODISON

1. Introduction

In less than 7 months time negotiations between the ACP and European Commission on reciprocal preferential trade arrangements, known as Economic Partnership Agreements (EPAs) are scheduled to begin. While the Cotonou Agreement sets out general parameters for the possible development of ACP-EU trade relations, it does not specify how negotiations are to be conducted. Articles 35 (2) and 37 (5) of the Cotonou Agreement merely state that *“Economic and trade co-operation shall build on regional integration initiatives of the ACP”* and that *“Negotiations on the economic partnership agreements will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group, taking into account regional integration process within the ACP.”*

However, whilst explicit references to Regional Economic Partnership Agreements (REPAs) were excluded from the final text of the Cotonou Agreement, the European Commission has always operated on the assumption that the EPA negotiations would be conducted on a regional basis with those regions in the ACP which have functioning regional integration processes and mechanisms¹.

It is against this background that the current paper seeks to review seven major issues which will need to be addressed under any process of ACP-EU trade negotiations. It is the contention of this

paper that these seven issues are of such substantive significance that they will need to be addressed at the level of pan ACP-EU negotiations prior to the definition of the geographical basis for the negotiation of economic partnership agreement or other alternative trade arrangements between ACP countries and the EU.

After these substantive and common concerns have been addressed, then appropriate procedures for the conduct of substantive negotiations on an appropriate geographical basis can be defined and negotiations can commence.

2. Reviewing the seven major issues

As a result of the very different economic structures and levels of development of ACP and European countries a number of issues can be identified which will need to be addressed under any moves towards reciprocal preferential trade arrangements. These issues include:

- the clarification of underlying objectives to be addressed through future trade negotiations;
- the impact of the introduction of free trade with the EU on the fiscal revenues of ACP governments;
- ensuring respect for the rights of least developed countries to non-reciprocal trade preferences;
- addressing the adverse effects of a reformed Common Agricultural Policy (CAP) on the development of

¹ See EU Development Cooperation Policy document and the recent Commission orientation note to the Article 133 Committee

ACP agricultural and value added agro-processing sectors;

- addressing the challenge of designing and implementing programmes of support to addressing supply side constraints in ACP countries, so as to enable ACP producers to exploit any new opportunities emerging as a result of the introduction of free trade with the EU;
- establishing the scope for the consolidation and expansion of duty free access for all ACP countries in the light of the Everything-but-Arms (EBA) regime established for least developed countries (including the future of the commodity protocols in the light of the reform of the CAP and the growing significance of stricter EU sanitary and phytosanitary standards);
- addressing through the structure, form and time tables for negotiations the capacity constraints facing ACP countries and regions, in the conduct of negotiations on complex tariff reduction questions and trade related areas.

2.1. Clarifying objectives

The first issue which needs to be addressed is clarifying the underlying objectives to be addressed through future trade negotiations. In the European Commission's view future Economic Partnership Agreements should seek to promote the central objectives of "*reducing and eventually eradicating poverty consistent with the objectives of sustainable development and the gradual integration of ACP countries into the world economy*". While the ACP Group endorses these objectives, there is a significant difference in the emphasis. For the EU the objective of reducing and eradicating poverty is qualified by its need to be consistent with the objective of "*the gradual integration of ACP countries into the world economy*". However, from an ACP perspective the

key issue is not "*the gradual integration of ACP countries into the world economy*" but the transformation of the basis of ACP integration into the world economy.

The reality is that ACP countries have been integrated into the world economy for centuries. The problem is that the basis of integration of ACP economies into the world economy does not allow for the promotion of sustainable poverty focussed forms of development. The key issue to be addressed before entering into detailed negotiations on timetables for tariff reductions and a range of complex trade related issues is whether the current approach and parameters for the establishment of Economic Partnership Agreements being put forward by the European Commission will positively transform the basis of integration of ACP countries into the world economy so as to allow for the promotion of sustainable poverty focussed forms of development.

This raises the important question of how moves towards reciprocal preferential trade arrangements between countries of vastly different levels of development can best be structured in order to ensure that a new basis for the integration of African countries into the world economy is established, capable of promoting sustainable poverty focussed development.

2.2. Addressing revenue losses

The second major issue which needs to be addressed is the impact of the introduction of free trade with the EU on the fiscal revenues of ACP governments. In many ACP countries, particularly in Africa, customs revenue from the imposition of imports duties on traded products are a principal source of government revenue. Where the EU is the major trading partner, revenues raised on imports from the EU often represent a significant proportion of the total customs duties raised. This is particularly the case in Africa where the EU is by far the re-

gions most important trading partner. The elimination of duties on imports from the EU could thus have major effects on the fiscal position of a number of African governments.

This can be illustrated by the impact of the EU-South Africa Trade, Development and Co-operation Agreement (TCDA) on the neighbouring countries of Botswana, Lesotho, Namibia and Swaziland, which together with South Africa, form the Southern African Customs Union (SACU). Estimates contained in a study financed by the EU and commissioned by Swaziland on the impact of the EU-South Africa agreement on the BLNS suggested the following minimum total revenue losses for each of these governments arising from the implementation of the tariff reductions set out in the EU-South Africa Trade Development and Co-operation agreement:

Botswana	5.3%
Namibia	8.6%
Lesotho	12.9%
Swaziland	13.9%

The problem now facing the governments of these four countries is how to establish efficient and effective alternative systems of revenue collection to compensate for these losses. This is by no means a simple task. A recent analysis of this issue submitted to the Namibian Parliament, found that even if all other viable tax raising options were pursued, the revenue losses arising from the introduction of free trade with the EU will be of such a magnitude as to require the Namibian government to reduce current government expenditures. Similar fiscal problems are likely to arise in other African countries.

Significantly, the EU has recently recognised the need to properly assess the scale of the problems arising and is in the process of establishing a 6 million Euro *Economic Integration Support Programme for the BLNS*, designed to support the development of programmes to address the restructuring challenges

which will be faced under conditions of free trade with the EU. However, studies and assessments are only one dimension of the problem, the more important dimension is the extent to which the EU will be willing to take some responsibility for addressing the fiscal problems which will arise in a range of African and other ACP countries as a result of a shift over to reciprocal preferential trading arrangements. This broad issue, of the framework within which the EU will work with African and other ACP governments in addressing the fiscal implications of the introduction of reciprocal preferential trade arrangements, can best be taken up with the EU at a pan-ACP level.

2.3. Respecting the rights of least developed countries

A third major issue which will need to be addressed is how the rights of least developed countries to non-reciprocal trade preferences can be respected within the EU's proposed EPA approach, given the regional market integration efforts underway throughout the ACP. Nominally, under the Cotonou Agreement least developed countries retain their right to non-reciprocal trade preferences.

This appears to be straight forward enough. It appears to recognise the right of least developed countries to "*special and differential treatment*", as enshrined in the WTO agreement.

However, the European Commission, despite the recent Everything-but-Arms initiative, has consistently qualified its recognition of the rights of ACP least developed countries to continued non-reciprocal trade preferences. Where least developed countries form part of regional groupings which have chosen to negotiate reciprocal preferential trade arrangements with the EU, the European Commission maintains that least developed countries will be expected to carry all the same obligations as are negotiated regionally by the region as a whole.

Box 7.1.: Least developed countries and regional African groupings

(Capital letters are least developed countries)

East Africa

BURUNDI
DJIBOUTI
Eritrea
ETHIOPIA
Kenya
RWANDA
SOMALIA
SUDAN
UGANDA

SADC

ANGOLA
Botswana
LESOTHO
MALAWI
Mauritius
MOZAMBIQUE
Namibia
Seychelles
South Africa
Swaziland
TANZANIA
DEM. REP. CONGO
ZAMBIA
Zimbabwe

Central Africa

Cameroon
CENTRAL AFRICAN REPUBLIC
CHAD
Congo
EQUATORIAL GUINEA
Gabon
SAO TOME & PRINCIPE

West Africa

BENIN
Cote d'Ivoire
GUINEA
MALI
Nigeria
TOGO

BURKINA FASO
GAMBIA
GUINEA BISSAU
MAURITANIA
SENEGAL

CAPE VERDE
GHANA
LIBERIA
NIGER
SIERRA LEONE

This has important implications for African least developed countries, many of which are amongst the poorest in the world. Since least developed countries form at least half and often the vast majority of the countries in each of the regional groupings in Africa with whom the EU has regional co-operation programmes, virtually all LDCs will find themselves embroiled in any regionally based EPA negotiations (see box 7.1.).

In this context the question arises: how can the rights of least developed countries to continued non-reciprocal preferences be reconciled with the European Commission's proposal for regionally based economic partnership agreement negotiations (see box 7.2.)? This is a particularly important issue since it is likely that the starting point for any regionally negotiated Economic Partnership Agreement will not be the trade weaknesses of the least developed countries but rather the perceived trade strengths of the non-least developed African countries, which form part of the region.

Against this background it is questionable whether any regionally negotiated EPAs will be appropriate to the level of development and economic structure of least developed African countries.

This has implicitly been recognised by the Commission, which has acknowledged that if least developed countries enter economic partnership agreements then the EU should provide additional aid from the European Development Fund (EDF) resources to help with the adjustment costs which will arise. To date, however, the EU has been reluctant to make concrete commitments on how least developed African countries are to be effectively assisted in meeting the challenges which will arise from moves towards free trade with the EU.

The experience of Lesotho is illustrative in this regard. While revenue losses arising from the implementation of the EU-South Africa Trade, Development and Co-operation Agreement are likely to be between 4 and 7 times larger than annual EU aid transfers, so far the EU has only

**Box 7.2: Respecting the rights of least developed countries:
the case of African LDCs**

46	Sub-Saharan African Countries
32	Least Developed African Countries
14	Non-Least Developed African Countries

Of which

4	are already embroiled in a FTA with the EU (South Africa, Botswana, Swaziland and Namibia)
10	require a new basis for their trade relations with the EU beyond 2007

To accommodate these 10 countries the European Commission is proposing an approach which will embroil 32 least developed countries in reciprocal preferential trade arrangements which are inappropriate to the structure and level of development of least developed African countries. This undermines the established rights of least developed countries under the WTO to “*special and differential treatment*”.

made highly qualified commitments on assisting Lesotho in making the necessary fiscal adjustments.

Against this background careful consideration will need to be given to the underlying principles which should be established to guide regionally based EPA negotiations, if the rights of least developed countries to non-reciprocal trade preferences are to be respected. The European Parliament and the ACP-EU Joint Parliamentary Assembly could usefully take an initiative in drafting such principles which can then be used as a yardstick against which to measure the success of any future EU-African negotiations around regional economic partnership agreements.

2.4. Addressing CAP distortions

A fourth major issue which will need to be addressed is the adverse effects of a reformed CAP on the development of African agricultural and value added agro-processing sectors in the context of moves towards free trade. With many ACP countries (particularly in Africa) dependent upon the agricultural sector, the issue of the trade distorting effects of EU agricultural support programmes, under the CAP in the context of moves towards freer trade is a matter of considerable importance.

This is an issue which the EU has largely ignored, insisting that any moves towards free trade with ACP countries should be consistent with the EU's CAP. Equally, this is an issue which is not being addressed within the current pattern of CAP reform. Indeed, the current trajectory for CAP reform is likely to exacerbate rather than alleviate the problems generated by CAP distortions. While many maintain that the process of CAP reform will reduce the levels of public aid to European agriculture, the reality is that between 1999 and 2002 (the year prior to the implementation of the Agenda 2000 round of CAP reforms and the final year of implementation) EU agricultural expenditures will have increased 17%, from 39.5 billion Euro in 1999 to 46.2 billion Euro in 2002.

Perhaps of even greater significance is the changing nature of EU agricultural aid which is making EU products far more “price competitive”. The current trajectory for CAP reform involves a move away from a system of price support to a system of direct aid to farmers. This allows EU prices to be brought down towards world market price levels, with farmers being compensated for lower prices by higher levels of direct aid. The overall aim of this reform is to establish a firmer basis for the development of a more price competitive export orientated

European food and drinks industry, whose market is no longer restricted to the EU, but which can rather supply the world, without the need for export refunds and hence quantitative ceilings. This could well close off market opportunities for value added food processing across a range of product areas in agriculturally dependent ACP countries. This is in direct contradiction to the emphasis placed in EU development co-operation policy on promoting greater value added processing by supporting ACP countries in moving down the value chain, to the production of higher value added products.

In addition, the lower prices which the shift to direct aid is bringing about will considerably reduce the earnings ACP countries gain from their exports to the EU market. For example, the explanatory statement to the October 2000 Commission draft proposals on the common organisation of the market in sugar, pointed out how a 25% reduction in the EU sugar price would result in annual income losses to ACP sugar exporters of around 250 million Euro.

Given that a reformed CAP will continue to massively distort the operation of agricultural markets on which agriculture based ACP economies depend and the profound effects which the introduction of free trade in agricultural products could have in the context of the new forms of CAP distortions, this is an issue which should be taken up with the EU at the ACP level, prior to the commencement of regionally specific EPA negotiations. This is particularly the case since the South African experience demonstrates how hard it is to get the EU to make binding commitments in CAP related areas within any process of bilateral trade negotiations.

2.5. Addressing supply side constraints

The fifth major issue which needs to be addressed is how in practice effective programmes of support to addressing supply side constraints in ACP countries

can be designed and implemented, so as to enable ACP producers to exploit any new opportunities emerging as a result of the introduction of free trade with the EU.

In many ACP countries serious constraints are faced by ACP enterprises in producing goods competitively, as a result of the developing nature of their economies. These constraints range from the unreliable provision of public utilities (electricity and water supply) and poor public infrastructure (run down roads and railways) through weak institutional and policy frameworks (leading to fluctuating exchange rates and high inflation and interest rates) to low labour productivity (arising from poor education, health and housing provisions).

It is widely recognised that addressing these supply side constraints on production is one of the keys to the economic development of ACP countries. The EU maintains that EPAs will promote more effective action in addressing supply side constraints by opening up ACP economies to competition. This, it is argued, will lead to the development of more competitive forms of ACP production, capable of promoting sustainable, poverty focussed development.

However, it seems highly questionable to suggest that a policy shift in one policy area - external trade policy - will have such a profound effect on the underlying causes of the supply side constraints which face ACP producers. Undoubtedly it will address some of the policy driven constraints on the development of ACP economies. However, it will leave unaffected those constraints derived from low labour productivity, unreliable public utilities and poor public infrastructure. These supply side problems are

"In the real world... survival in agricultural markets depends less on comparative advantage than on comparative access to subsidies. Liberalising local food markets in the face of such unequal competition is not a prescription for improving efficiency, but a recipe for the destruction of livelihoods on a massive scale"
(Human Development Report, UNDP, New York, Oxford University Press, 1999)

likely to persist for some time. To date after over 25 years of ACP-EU cooperation, these problems remain as intractable as ever. Indeed, recent evaluation reports suggest that overall EU funded projects to address supply side constraints have had very poor results. The EU's record in seeking to develop programmes to address supply side constraints in African countries is not a good one.

Against this background a strong case exists for arguing that the underlying supply side constraints which face ACP economies need to be addressed before steps are taken to introduce free trade with the EU. This is particularly needed in Africa where the gains of the past 30 years in terms of human development are being dramatically reversed by the impact of the HIV/AIDS pandemic, the impact of Malaria and the resurgence of Tuberculosis. This erosion of the human resource base is exacerbating the problems of efficient infrastructure and public utility provision. This is serving to undermine the economic competitiveness of many African countries. In this context, if these underlying supply side constraints are not addressed before free trade is introduced, then it seems likely that ACP countries (particularly in Africa) will face major adjustment costs under any moves towards the introduction of free trade with the EU.

Against this background it would appear that comprehensive programmes of assistance are urgently needed, designed to effectively address many of the supply side constraints facing African countries, before free trade is introduced with the EU.

2.6. Reviewing the scope of market access

A sixth major issue which needs to be addressed is the scope for the consolidation and expansion of duty free access for all ACP countries exports to the EU in the light of the EBA regime established for least developed countries. The European

Commission has estimated that residual market access restrictions are maintained in place against African exports on over 1,000 agricultural product tariff lines.

However, as the recent EBA initiative has demonstrated, in many of these areas ACP least developed countries lack the production capacity to exploit any new duty free access in all but a few very specific areas. Unfortunately this tends to coincide with the areas where the EU wishes to retain in place protectionist measures. If moves towards free trade with the EU are really to benefit ACP countries then this residual protection of what South African Trade Minister Alec Erwin has described as "Grandfather Industries" will need to be removed. In addition, the EU will have to carefully consider the impact of CAP reform measures on the attractiveness of European markets to third country exporters, since the shift over to direct aid in the farming sector is profoundly effecting prevailing agricultural price levels in the EU.

The question arises: What can realistically be done to ensure that ACP states secure preferential access to the EU market beyond 2008 in areas which bring meaningful benefits to African producers and traders?

2.7. Structuring negotiations to accommodate capacity constraints

The seventh major issue which needs to be recognised and addressed is the establishment of appropriate structures, forms and time tables for negotiations which take into account the capacity constraints facing African governments and regions, in the conduct of negotiations on complex tariff reduction questions and trade related areas.

While the European Commission has placed considerable emphasis on conducting EPA negotiations at a regional level, this largely ignores the reality in ACP regions (particularly in Africa) where there is an absence of any firmly established and functioning regional institutions capable of taking a lead in trade

negotiations leading to tariff reductions throughout a region. Co-ordinating regional co-operation programmes and servicing regional policy discussions is quite a different task to conducting negotiations over tariff reduction schedules on behalf of a multiplicity of countries with very different economic structures and levels of development.

In none of the African regions do the institutional structures exist to allow the negotiation of regional tariff reduction schedules at a regional level. Indeed, in virtually all African regions there are only very insecure conditions for the creation of such regional institutions. These institutional constraints at the regional level will mean that national officials will have to play the major role in the detailed negotiation of EPAs. However, it needs to be recognised that in most African countries there are major human capacity constraints faced in dealing with complex negotiations on tariff reduction schedules and a multiplicity of trade related areas.² This situation is compounded by the fact that in the coming years in many regions over-stretched trade officials will be involved simultaneously in complex trade negotiations at the regional (with regional partners), inter-regional (with the EU) and multilateral (WTO) levels.

There is a very real need to ensure that the EU takes seriously the capacity constraints which ACP countries and regions will face in negotiating EPAs. In this context a very real distinction needs to be made between ACP governments and regional institutions negotiating reciprocal preferential trade arrangements geared towards addressing the particular needs of ACP countries and regions and ACP

governments and regional bodies simply signing up to pre-conceived free trade area agreements.

The capacity constraints facing ACP governments and regional bodies in this sphere of trade negotiations will need to be reflected in the structure, form and time tables for the conduct of negotiations, which will need to be designed in ways which ensure that national trade officials in African countries (and concerned non-state actors) can play a meaningful and substantive role in determining the type of trade arrangement established with the EU for the coming decades.

3. Conclusion

In many respects all these issues will need to be addressed before the commencement of any regionally-based negotiating processes. Indeed, given the complexity of the issues faced in all of the foregoing areas, the major issues of substance can probably best be addressed at the ACP-EU level before the definition of the geographical basis for the conduct of future trade negotiations between the EU and African countries.

Looking to the role of the European Parliament and the ACP-EU Joint Parliamentary Assembly a strong case can be made for these institutions taking the following steps:

- establishing the essential principles which should be respected in any process of ACP-EU trade negotiations;
- establishing the major issues which should be addressed within any process of ACP-EU trade negotiations;
- establishing a yardstick against which the progress of negotiations on substantive issues can be addressed;
- monitoring the actual progress of trade negotiations through various Committee structures.

² This is well illustrated by the length of time it took to move from agreement in principle to the creation of a SADC Free Trade Area (1996) and actual conclusion of negotiations on tariff reduction schedules and their implementation (2001). Indeed, the complexities involved led to the creation of a on-going SADC Trade Negotiating Forum, which has to create a number of specialist working groups (e.g. the Technical Committee on Wheat, Technical Committee on Rules of Origin) to develop appropriate trading arrangements in sensitive areas and resolve important trade related issues.

8. THE MAI THROUGH THE BACK DOOR?

INVESTMENT LIBERALISATION IN REGIONAL FREE TRADE AGREEMENTS.

SABINA VOOGD

This contribution looks at the investment regulations in the Cotonou Agreement and set out to discuss the question: What is the EU approach to investment provisions in regional investment agreements?

I think they do not have so much a regional focus as an end goal, they are much more looking at an investment agreement on the multilateral level. I want to talk about investment agreements on the multilateral level shortly, about the Economic Partnership Agreements (EPAs), problems in forming a regional group in ACP countries and about investment agreements in EPAs. Thus one could rename the workshop into: The investment plans of the EU: using a regional spanner for a global opening of markets.

The EU looks at an investment agreement under the WTO. Officially negotiations will start in 2003 after an explicit consensus from the WTO members, but in practice the pre-negotiations have already started in the working group on investments in the WTO. These talks happen on the basis of proposals of the European Union on investments

But perhaps even more important: part of the investments will be regulated in another agreement. The General Agreement on Trade in Services (GATS) regulates not only trade in services, but also investments in services. Multinational corporations increasingly treat trade and investment as complementary means for carrying out comprehensive global production activities, rather than as alternative strategies for penetrating markets. Simply put, they view trade and investment as flip sides of the same, market access, coin. The global interest in in-

vestment liberalisation is very much focussed on services, since there are relatively few significant barriers to entry via Foreign Direct Investment (FDI) in manufacturing or in primary industries.

Market access is a key-interest that will be served by GATS. It is also the area that negotiators want to expand in the negotiations on the GATS 2000 agenda. The Cotonou Agreement foresees the negotiations of new WTO-compatible trading agreements between the EU and the ACP. Such agreements will build on regional integration processes in the ACP. The EU wants to enter into EPAs with those ACP groupings that constitute effective regional trading arrangements. The intention is to have EPAs between ACP and EU in place by 2008.

These agreements should be WTO-compatible. That means no longer preferential treatment for developing countries but "reciprocity". In the power relations as they stand now this means that the EU will benefit more from these agreements than the ACP countries. So countries will be dealt with in a regional basket. What can happen if such a region makes deals about investments. Look for instance at the region of Southern Africa. There is now a regional organisation called SADC, the Southern African Development Community. Amongst its members are countries like Angola, Botswana, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Another regional organisation in that same region is COMESA with nearly the same member countries, plus a lot more, excluding South Africa. So the question is: which regional grouping will be the one to make an EPA with the EU? Some

countries prefer to work in COMESA because South Africa is not a member, some prefer to work with SADC because it has more money and because decisions taken are considered by the member-countries as more binding than decisions taken under COMESA. So there is one problem: How will the regional groupings be formed?

I've just returned from a trip where I visited one of the poorest countries in SADC, Zambia, and the richest, South Africa. What you see in the Southern African region is that all countries are flooded with products from South Africa. One explanation for this is that the neighbouring countries of South Africa do not have competition regulations in place that can protect them against domination of South African companies. In Zambia unemployment is extremely high (some 56 % of the population, and this is an official figure) but the shops are full with South African products. The one big thing that Zambia can sell is copper. The mines were first owned by the government, and then after a big liberalisation-wave sold to South African companies. These companies take the profits out of the country, they do not reinvest in machinery and bring their own workers in the management-level. Zambia gets very little from this investment, a few low paid jobs (often people are hired on a temporary basis) and now that the copper prices are so low they get the remains of the mines, because the South African company is pulling out. The interests for investments are wide apart: South Africa wants to invest as much as possible, Zambia wants to attract investments, but in such a way that Zambia benefits from those investments.

Now imagine Zambia and South Africa at the negotiation table with the other South African countries and the EU to talk about investments. How will they ever reach an agreement that will benefit all? With current power-positions it will be very likely that the outcome of such an agreement will be most favourable for the EU and South Africa.

South Africa has spoken out in favour of the plans of the European Union

for an investment agreement under the WTO and supported the EU on that issues before and during the Doha ministerial conference. Such an outcome could fit precisely in the picture of the European Commission: EPAs must be fully compatible with the provisions of the WTO. In all trade-related area's EPAs must build on the "acquis" of the relevant multilateral trade rules and can only be developed in accordance with those rules.

If I read this sentence right it could well be that investments rules that are to be developed under EPAs must be developed along the lines that are set out for the "pre-negotiations" on investments in the WTO: Based on the principles of non-discrimination, openness, transparency and stability and general principles of protection. Principles of non-discrimination point to National treatment and most-favoured nation treatment, which are strong means for opening up markets. Let's hope that also the interests of host and home countries will be reflected in a balanced manner and that due account of the development policies and objectives of host governments will be taken as well as their right to regulate in the public interest. And that special development, trade and financial needs of developing and least developed countries will be taken into account as the Doha declaration calls for.

One may wonder whether the Commission will adopt a flexible approach, allowing for instance least-developed countries which would join an EPA to set conditions for certain investors or to keep their preferential access to the EU without having to provide reciprocity. The problem is that non-reciprocal free trade areas are unlikely to be WTO-compatible under current rules (GATT art. XXIV). Apparently, the WTO negotiations on regional integration agreements under article XXIV are happening right now, they could give room for a differential treatment within such agreements. The question remains: Has there been enough pressure to insert the possibility for differential treatment?

9. OPTIONS FOR PARTICIPATION OF ACP AND EU CIVIL SOCIETY

SIMON STOCKER

Recognised actors in the partnership

With the signing of the Cotonou Agreement non-state actors were formally recognised as legitimate partners in the EU's co-operation with ACP countries. This included all aspects of the co-operation identified and defined by the agreement. The legitimising of non-state actors within the agreement can be found in various articles:

- Partnership shall be open to different kinds of other actors (i.e. in addition to the governments of the EU and ACP) to encourage integration of all sectors of society (art 2. Fundamental principles)
- The complementary role and potential of non-state actors as contributors to the development process are recognised (art 4. General approach)
- Non-state actors are defined as private sector, economic and social partners, including trade unions and civil society in all its forms according to national characteristics.
- The need for participatory mechanisms is emphasised (art 9. Essential elements and fundamental elements)

Areas of inclusion

The Cotonou Agreement explicitly identifies the following areas in which non-state actors should be engaged:

- Be informed and involved in consultation on co-operation policies and strategies, on priorities for co-operation especially in areas that concern or directly affect them, and

on political dialogue (art 4. General approach)

- Civil society shall be associated with the political dialogue (art 8. Political dialogue)
- Be provided with financial resources (art 4)
- Be involved in implementation (art 4)
- Be provided with capacity-building support (art 4)

Qualifications

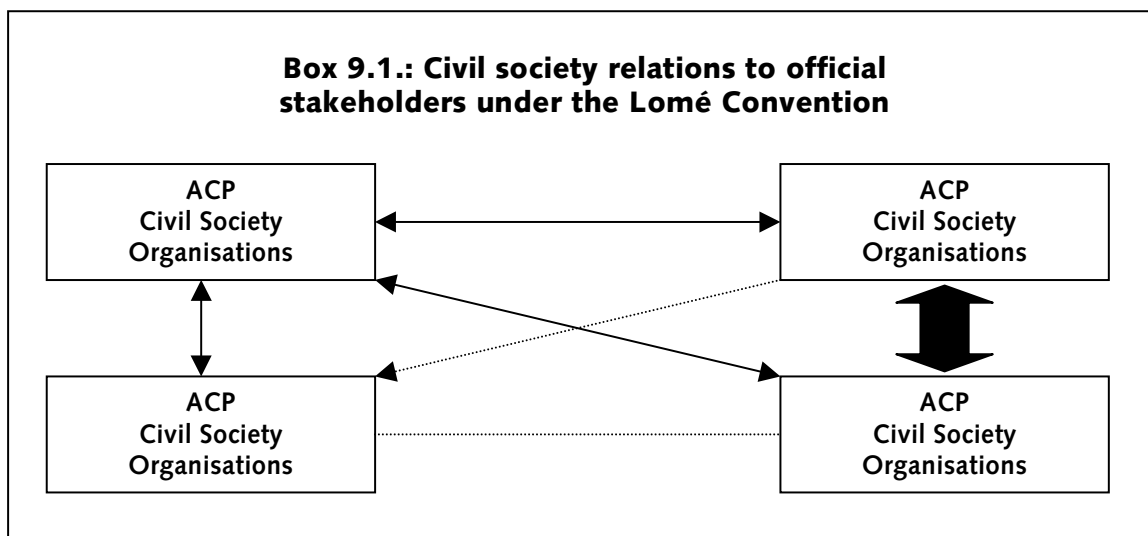
While non-state actors are recognised there are qualifications in the agreement on who shall be included at the different stages. For example:

- Non state actors shall be informed, especially in areas that concern or directly affect them
- Financial resources shall be given under conditions laid down in the Agreement
- Non state actors shall be involved where these actors have a comparative advantage
- Recognition of non-governmental actors depends on the extent to which they address needs of the population, their specific competencies and whether they are democratic and transparent.

Implications of recognition

The formal recognition of the role of non state actors has important implications, notwithstanding the qualifications. It provides in particular for a formal place for ACP civil society in ACP-EU co-

Box 9.1.: Civil society relations to official stakeholders under the Lomé Convention



operation, and establishes a formal relationship with the contracting governmental parties. This was not the case under the Lomé Convention, where the position of European civil society was stronger, not simply because of their financial resource base, but also because they have a clearer system of engagement with the institutions of the European Union. Under the Lomé Convention EU NGOs also established relatively strong relations with ACP government representative in Brussels, usually without the involvement of ACP civil society in the process. Diagrammatically the system under the Lomé Convention could be seen as in box 9.1.

ACP civil society under the Cotonou Agreement

The Cotonou Agreement provides opportunities for ACP civil society to become more organised, as a means to engaging in the agreement in a co-ordinated way. Aspects of this include:

- While the Cotonou Agreement provides a framework for the EU co-operation with the ACP group of countries as a whole, the main instruments of co-operation remain bilateral between the EU and individual ACP states. The national context of ACP countries has to be

the basis for civil society action, with civil society organisations based and co-ordinated nationally.

- Increasingly there will be a need for regional co-operation and co-ordination between civil society actors in the region. This will be particularly important for the negotiations on trade that will result in new, regionally based trade agreements with the EU by 2008.
- The Economic and Social Committee remains a centrally defined institution for non state actors within the agreement. However, the ESC, which existed under the Lomé Convention, does not adequately encompass civil society actors.
- The ACP Civil Society Forum was established in 1997. Its aim is to provide an ACP wide structure for ACP civil society organisations. It has six focal points: Caribbean, Pacific, Southern Africa, East Africa, West Africa and Central Africa.
- ACP civil society has also initiated an involvement around the ACP-EU Joint Parliamentary Assembly. The Assembly is seen as an important opportunity for civil society from both the ACP and the EU to engage with elected representatives.
- Equally, there are opportunities to explore around meetings of the Joint

Council of Ministers, especially under the terms of the Cotonou Agreement.

Financing of ACP civil society

Under the Cotonou Agreement there is an expectation that activities of civil society organisations and other non state actors will be financed as part of the EU's co-operation with the ACP. An indicative figure of 15% of national programmable aid was identified as being the target for use through non state actors. However, how this is to work in practice has not been clearly identified, and the indicative levels of support for non state actors from national programmable resources is considerably less than 15%. The instruments that have been used for funding non state actors have included:

- Giving access for non state actors to tender within the micro projects framework of the Lomé Convention;
- Grants to non state actors, both from Europe and ACP countries under the decentralised co-operation budget line;
- Possibilities to access finance from other budget lines of the EU;
- Funding from the European Commission of non state actors through European NGOs, particularly from the co-finance budget line.

The Cotonou process – participation in reality

While the implementation of the Cotonou Agreement is still at an early stage some conclusions can already start to be drawn on the way in which civil society and other actors are being included in the planning and programming processes.

In particular a number of ACP regional seminars were held at the end of 2000 with the aim to explain the programming process. ACP governments

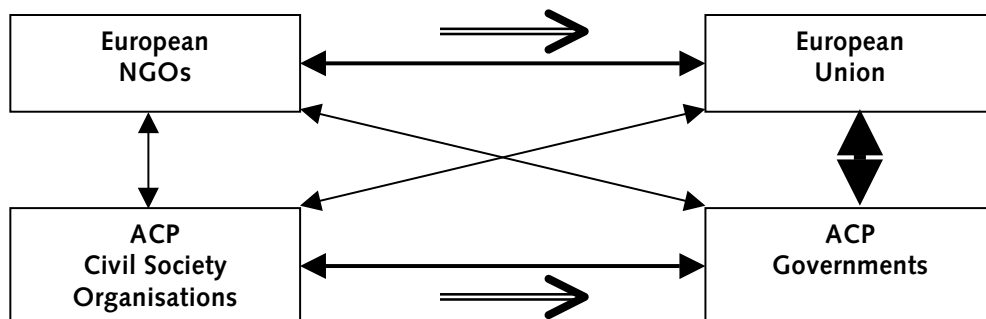
were expected to include civil society representatives in their delegations, but from the participation lists that were available this seemed to be the case in only 23 of the 77 countries. Even in the 23 the contact address for some civil society participants were government ministries.

Furthermore, civil society organisations were also expected to be involved in the process that followed to draft Country Strategy Papers & National Indicative Programmes. Country assessments in five countries (Benin, Cameroon, Dominican Republic, Tanzania and Uganda) suggested that while civil society was involved this tended to be in a cursory and superficial way. The preliminary conclusions showed:

- There was a general lack of information provided, both on Cotonou itself and on the process for participation;
- Little notice was given to those invited;
- The selection of participants appeared arbitrary
- There was little follow up once the consultation meetings were over.
- On the basis of these conclusions some recommendations have been identified:
- The need for a consistent provision of information;
- The process of dialogue should be ongoing with a consistent set of participants;
- A national consultation structure should be built, in which the autonomy and independence of the non state actors involved are assured.

The objective in establishing the relationships between the different actors involved in the co-operation process seeks a more equal partnership between civil society actors from the ACP and Europe, in which the roles of each are more

Box 9.2.: Civil society relations to official stakeholders under the Cotonou Agreement



clearly identified. Diagrammatically it can be presented as in box 9.2.

Future role for civil society

- The future role of civil society within the context of EU-ACP co-operation should first be based nationally but extend regionally and globally. Involvement in co-operation processes include:
- Nationally in the process for National programming & its implementation;
- Regionally, within the programming process for the regional programmes, but more especially around the EPA negotiations
- At the overall level in the Cotonou framework as a whole (JPA, Joint Council, ACP secretariat)

Second, the actions of civil society should be based on ACP civil society perspectives but joint strategies and approaches between ACP/EU civil society should be established so that the official partners to the Cotonou Agreement can be engaged, in particular:

- ACP governments
- ACP regional and global institutions
- EU institutions
- EU member states
- Joint institutions (JPA, Council, etc)

Finally there should be a relationship to other initiatives, such as civil society involvement in PRSP processes and Social Watch

Information

An adequate provision of information is essential for the constructive participation of civil society and other non state actors. This information need to cover:

- The overall terms of the Cotonou Agreement and the opportunities that it presents;
- Specific aspects of ACP co-operation;
- National co-operation agreements within the framework of the Cotonou Agreement.

Both ACP governments and the European Commission should take responsibility for providing relevant information in an on-going and accessible way. Information from non state actors also needs to play a role, particularly in presenting perspectives, opinions and experiences of civil society organisations and other non state actors. There are many ways in which this can be done, including Euforic, which provides an internet based information system focusing on EU development co-operation. A critical aspect of this information will be national studies on the various aspects of EU co-operation with

those countries. For the trade negotiations the production of impact studies of possible future arrangements should be a core aspect of the preparatory process.

Monitoring implementation

A process to monitor implementation should also be envisaged, again being primarily based on increasing national civil society capacity within the ACP. These should include assessments of the implementation in specific countries and provide information on ACP-EU co-operation in that country. These assessments should be produced by civil society organisations from that country, preferably as part of national coalitions, but should be supported by European NGOs in that process. The aim would be to develop strategies on the basis of these conclusions.

Monitoring should furthermore look at the overall co-operation as well as different sectors such as education, health, trade etc.

There remains a need to follow the EU's overall co-operation framework as this affects the context in which co-operation will take place with individual countries. This needs to be primarily followed from Brussels, and cover in particular the evolution of EU Development policy, the reforms of the EU's institutions and an analysis of the implications and the relationship between development policy and other external policies.

Defined partnership

There needs to be well defined partnerships between the ACP civil society actors and their EU counterparts. These should be based on:

- A focus on ACP-EU co-operation
- Joint civil society strategies
- Defined roles for ACP and EU civil society actors

- The targeting of the official partners ACP and EU
- Producing monitoring reports

Conclusions

In conclusion, the Cotonou Agreement legitimises the participation of non state actors, including civil society organisations, in EU-ACP co-operation. While the agreement provides a legal base for this, it still needs to be defined in detail. This should not be left to the official parties to the agreement as the likelihood is that the result will be more restrictive than could otherwise be the case. Civil society needs to organise and make proposals for its engagement within this co-operation framework that will create space for civil society. This needs to be done in partnership between ACP and EU civil society. This will require:

- Strengthening of civil society actors
- Redefining relationships between EU and ACP civil society
- Reinforce autonomy and independence
- Joint strategies that can be implemented within the ACP and in Europe and in which ACP and EU civil society actors have clearly defined roles.

10. SUMMARY OF POLICY DIALOGUES

This section summarizes the reports of the working groups on trade policy, investment policies and civil society participation. In addition, the main lines of arguments are presented as they appeared throughout the discussions.

10.1 Trade policy

Within the working group on trade policy, a total of six themes were addressed. Discussions on each of the topics led to the formulation of concrete questions that were addressed to the various political representatives during the policy dialogue session. Issues of concern for future ACP-EU trade negotiations identified during the working group discussions included the following:

I. Market access

1. Will the EU mandate for EPA negotiations offer ACP countries more than one option for their future trade relations with the EU?
2. Will the EU mandate offer ACP countries better access to the EU market than currently enjoyed?

II. Fiscal dimension

3. Given the likely scale of the effects of moves towards free trade on total government tax revenues in a number of ACP countries, is the EU willing to include into the discussion a comprehensive approach comprising support for fiscal reforms in ACP countries within its approach to EPA negotiations?

III. CAP dimensions

4. Given the importance of the agricultural sector to ACP-EU trade relations, is the EU willing both to discuss the external effects of the CAP on ACP countries and take steps to minimise the adverse

effects of the external consequences of the CAP on ACP countries as an integral part of EPA negotiations?

5. Given the impact which public aid to the agricultural sector in Europe has on trade flows, is the EU in favour of a strong special safeguard clause in EPAs to enable ACP governments to effectively protect domestic producers from competing products?

IV. Supply side constraints

6. Given the supply side constraints faced in ACP countries as a consequence of the developing nature of their economies, what new instruments and institutional arrangements will need to be established to ensure that ACP producers are able to exploit the market opportunities offered by any new trade arrangement with the EU?
7. Given the supply side constraints faced in ACP countries as a consequence of the developing nature of their economies, what new instruments and institutional arrangements will need to be established to ensure that ACP producers are able to compete more effectively with EU enterprises on domestic and regional markets under conditions of free trade?

V. Regional dimensions

8. How can the EU reconcile the diversity which exists in ACP regions with its proposed regional approach to EPA negotiations?
9. With 60% of the ACP population living in LDCs, how does the EU propose to reconcile the rights of LDCs to non-reciprocal trade preferences with a regional approach to the negotiation of EPAs including reciprocal trade preferences?
10. Does the regional institutional capacity needed for substantive trade negotiations with the EU exist in the various regions of the ACP?

11. Do the panellists believe that there is a need to first create and consolidate stable and sustainable regional entities in the ACP before proceeding with negotiations of reciprocal preferential trade arrangements with the EU?

VI. Services, investment and trade related areas

12. Given their complexity, how can the negotiations on services, investment and trade included in the scope of EPA negotiations be structured in ways which allow a meaningful participation of ACP governments in discussions on the substantive points at issue given their capacity constraints?

Taking into account these issues and concerns identified, the working group proposed finally to approach the forthcoming ACP-EU negotiations in a two-phased approach. The first phase would include substantive discussions of the forementioned issues and concerns at the pan-ACP-EU level to agree on principles and approaches to be adopted and in the second phase would embark on detailed discussions on specific measures to be adopted at the appropriate geographical level.

In response, Karl-Friedrich Falkenberg from the Directorate General for Trade underlined the Commission's view that there is no alternative to a EU negotiating mandate on EPAs. He expressed the confidence of the Commission that, following the conclusion of EPAs, market access conditions will improve significantly for ACP countries, in line with the notion that the fiscal implications of any move to free trade will not pose an impossible obstacle. With regard to the effects of CAP reform, he acknowledged that the EU is willing to consider the external implications for ACP countries and to take appropriate measures as well as to consider a safeguard clause built into EPAs to effectively protect local producers from overseas competition. With regard to the market opportunities for ACP

economies created under any new trade arrangements the Commission believes that the new EPAs will work. Falkenberg said the Commission's central objective is to develop regional markets within the ACP by phasing in reciprocal trade over time adjusted to the regional development and the degree of international competitiveness. Thus the negotiations will have to address the existing supply side constraints in ACP countries. However, in his view, it cannot be said whether this will also require new instruments and additional arrangements and should depend on further developments. Bureaucracy should be kept to a minimum in any case. In the Commission's view appears to be no contradiction between the regional diversity of ACP economies and negotiations on regional EPAs. Own experience within Europe shows quite clearly that different levels of economic development can be accommodated. In Europe this has been achieved by providing transfer payments through regional funds and other means to strengthen the weaker partners. For the Commission, this applies in particular to ACP LDCs which have more to gain from regional integration. Although the Cotonou Agreement guarantees the right for ACP LDCs to continue non-reciprocal trade preferences with the EU, the focus should therefore remain on regional development. According to the Commission, regional capacity to conduct substantive trade negotiations is being developed. In order to negotiate on a regional basis, the Commission has earmarked funds to strengthen ACP negotiating capacities. However, for Falkenberg regional integration is not a precondition to start EPA negotiations, since the onset of negotiations should not be delayed until such systems are functioning, which should be accomplished by 2008. In the Commission's eyes, it's a myth that African countries do not know what private investments are. Most African countries are beginning to define their national investment policies, develop domestic competition legislation, regulate services,

draw up policies for telecommunication, banking and other service activities. The Commission aims at focusing, simplifying and better co-ordinating these existing regulations. Therefore, under the move towards EPAs, the objective is not to impose completely new systems on ACP countries, but to give more credibility to the existing systems by basing them regionally. Finally, on the question of phasing, Falkenberg noted that a first common phase is important to fully inform ACP countries on the issues. However, although the objective of negotiations will be to create similar provisions, the different economic realities of each region must be taken into account.

Gero Friedel from the secretariat of the European Parliament's Development Committee, and co-secretariat of the ACP-EU Joint Parliamentary Assembly, added some comments on the preparations for EPA negotiations. European parliamentarians have been calling for the greatest possible flexibility in the calendar for negotiations, the establishment of two negotiating phases and the involvement of the European Parliament at all stages of negotiations. To support ACP countries, sufficient capacity building measures should be made available that exceed the creation of the ACP bureau in Geneva and will require more resources from the Commission's side. In preparation for EPA negotiations, the European Parliament is calling for a detailed cost-benefit-analysis that will evaluate the advantages related to new trade agreements and quantify possible negative outcomes. In principle, EPAs should not leave ACP countries worse off than today, they should take into account their socio-economic constraints, take into account the external effects of the Common Agricultural Policy (CAP) and the reform of the sugar protocol, proceed with caution in the area of services, take fully into account capacity building needs with regard to non-tariff barriers to trade and rules of origin, and pay due attention to the environmental and cultural aspects of co-operation. The Parliament's ap-

proach to regional integration is strongly rooted in development objectives. Therefore, regional integration needs to be an autonomous process controlled by the six existing ACP regions. Since diversity within the regions is considerable and capacity is often lacking, regionalisation should proceed with caution and should not be a precondition to start negotiations.

Evita Schmiege, representative of the German Ministry for Economic Co-operation and Development (BMZ), commented on the aspects of development co-operation and the regional dimension of EPAs. She strongly underlined the need for trade-focused forms of development co-operation such as envisioned under the Cotonou Agreement. The member states and the Commission realise, however, that ACP countries will need support in a variety of areas including clear economic analysis, support with policy development, supply side capacity, support to conduct parallel negotiations (WTO and EPAs) and the implementation of EPAs after 2008. To facilitate adequate forms of support, the need for a strengthening and the establishment of new institutions, in particular in new areas of trade negotiations such as trade in services, protection of intellectual property, investment and competition, may arise. In some ACP countries, formulation of appropriate legislation is progressing, other countries still have only a weak institutional background. CARICOM is the only integration initiative that successfully created regional institutions. In the BMZ's perspective, the challenge ahead thus is the creation of an effective economic and legal institutional framework at the ACP regional level. In the following discussion Schmiege presented the predictions of the foreign trade theory which states that unilateral trade liberalisation has positive spin-offs, but that its likely success in terms of economic development depends on factors such as size, infrastructure etc.. In this regard regional integration, in particular, creates the potential for spill-over effects from

the national to the regional level, thus fostering regional development. Therefore, also LDCs should not be excluded from the liberalisation exercise, according to their competitive advantages. In her view, deep integration as the long-term objective will only be achieved if economic partnership agreements jump-start a deeper economic dynamic in ACP countries.

10.2 Investment policies

Introduction

EPAs, as currently envisioned by the EU, will not only profoundly restructure trade relations between the parties, they will also address investment issues and support for private sector activities. Since the main focus of negotiations in these areas will be on the protection and creation of foreign direct investment flows to ACP countries, some critics within civil society have expressed their fear that, in the context of negotiations on regional trade agreements, the EU is seeking to re-introduce "the MAI through the back door". There are concerns that EPAs will be used to strengthen investor's rights while limiting ACP countries' policy options to conduct their own investment policies.

Foundation

Art. 78 in the Cotonou Agreement provides the foundation on which further negotiations on investment protection will be based. Art. 78 states that EPAs will serve to "introduce general principles of protection and promotion of investments, which will endorse best results agreed in the competent international fora or bilaterally." Furthermore, Art. 15 in Annex II sets out detailed provisions for investment promotion and protection agreements. Some of the elements to be considered in this type of agreements include:

1. legal guarantees to ensure fair and equitable treatment and protection of foreign investors;
2. the most-favoured-investor clause;
3. protection in the case of expropriation and nationalisation;
4. the transfer of capital and profits;
5. international arbitration in the case of disputes between investor and host state.

In the draft negotiating mandate on future EPAs, the European Commission also addresses investment issues. Under trade-related provisions it is stated that "*the parties agree to establish, while respecting the respective competencies of the Community and its Member States, a regulatory framework which shall enhance and stimulate mutually beneficial sustainable investment between them. This framework will be based on principles of non-discrimination, openness, transparency and stability and on general principles of protection, which will endorse the best results agreed in the competent international fora or bilaterally*". This wording is familiar to civil society organisations from relevant WTO negotiations in which the EU has been a strong advocate to start negotiations on a multilateral agreement on investments. Whatever will be agreed within the WTO will have profound and direct influence on future EPAs. Furthermore, WTO investment negotiations provide the background against which EU-ACP negotiations will be situated. This will equally apply to the General Agreement on Trade in Services (GATS) negotiations.

Questions

Several questions were raised during the discussions in the working group on investment policies:

- In the light of more than 2000 bilateral investment treaties already in existence, what is the added value of multilateral investment regulations? Is it increasing harmonisation, credibility and transparency for investors

or is it the possibility for regulations that exceed the scope of bilateral investment agreements? In this respect, will they widen the understanding of investment from ex post national treatment to ex ante rights of access for foreign investors?

- Is what the EU has in mind then referring to increased openness?
- How should investment provisions under future EPAs be designed and what principles should apply?

Some of the core proposals for scope and content of future investment regulations within the context of future EPAs would include the following:

- In the course of negotiations it should be safeguarded that social and environmental standards will not be lowered in order to attract foreign investments.
- Basic social and environmental standards should be incorporated into future ACP-EU agreements.
- Negotiations on investment should follow the flexibility approach suggested by UNCTAD which would provide political space for ACP governments to define their own investment policies. These should include so-called performance requirements for foreign investors such as local employment, joint ventures with domestic industries etc., exemptions from national treatment to protect scarce resources (fish, forests) from over-exploitation and provide for infant-industry protection. This has to be seen against the background of differences in investment promotion policies in developed and developing countries: While industrialised countries apply subsidies and grant preferential fiscal treatment, developing countries resort to investment regulation practices due to a lack of resources for a more active investment promotion policy. Excluding the possibility of the use of performance requirements

would significantly restrict governments economic political space.

- Central to the debate on investment rules and regulations is the clear definition of some of the terms used within the debate. What exactly does the term "investments" cover? Is it only direct investment or does it also include portfolio investments? Will "investment protection" only cover already existing investments or will it be extended to cover also market access for foreign investors? And what exactly is the scope of expropriation (in the case of NAFTA strong environmental legislation could be interpreted as the expropriation of future profits)?
- Shouldn't investment policies be developed by ACP countries first under a regional umbrella, such as an investment protocol to be included under the SADC agreements?

In his response, Karl-Friedrich Falkenberg insisted that the MAI is dead, once and forever and that there is no political will on the Commission's side to re-introduce MAI-like provisions through the back door. One of the mistakes that led to the failure of the MAI was the inclusion of an investor-state dispute settlement mechanism. According to Falkenberg, such a clause will not be introduced in any EPA. The Commission does not see any justification, any possibility, any need today to liberalise all capital flows world wide. With regard to national treatment, the MAI used national treatment as a market access criterion, assuming that if a domestic enterprise would be allowed to exercise an activity in its territory, all foreigners would be allowed to do accordingly. This is an abusive interpretation of national treatment, and not what national treatment is defined as in the WTO. However, in his view national treatment still makes sense in services when the supply of services has been authorised after the borders have been crossed. While attracting foreign enter-

prises into a country one cannot discriminate against that company in comparison to the domestic market. Discrimination against foreign investors is just possible by the use of different tariff levels. Falkenberg gave the example of the Lomé conventions, that talked about trade but not about investments. Thus



Dialogue on policy requirements for future ACP-EU trade and economic co-operation agreements. From left to right: Jens Martens, Bibiane Mbaye Gahamanyi, Paul Goodison, Simon Stocker (chair), Evita Schmiege, Gero Friedel and Karl-Friedrich Falkenberg

trade preferences were offered without anything to trade. Yet, trade without the necessary production capacities, without the infrastructure needed to transport goods to the markets, is not possible. In his view, investments are therefore a prerequisite and the flipside of economic activity as trading. Investments need to be seen as opportunities, not as a problem. Investment can come from within a country or from abroad, and there can be differentiation. While it is acceptable to reserve some rights for regional operators before allowing competition from abroad, in many cases investments such as in telecommunications, transport, or infrastructure cannot be attracted within a single market. Therefore the Commission arguments that regional and multilateral investment provisions would add credibility to international investment flows. While international investments need

regulations, these create costs that have to be transparent. Even at the level of market access, non-discrimination will be needed. Today, investors find their way into markets, but often in a non-transparent and problematic way (corruption and environmental damage). Large transnational investors find their way into markets anyway, be it as restricted or intransparent as possible. The vast majority of small and medium sized enterprises, however, face real problems. Falkenberg believes that the opportunity to attract positive investment will be missed if governments are not transparent, open, and attractive. In his view, investment should be attractive and attracted, exactly where the recipient countries want to have it. Nearly half of African GDP is said to be held outside of Africa. A region within Africa cannot develop if its own investors choose other places in the world to invest. Also, for domestic investors it is imperative to have a functioning, credible and transparent system. Regulations related to banking, insurance, access and transfers of profits need to be clarified and committed, so that the investment conditions do not change over time. Falkenberg sees a built-in contradiction between commitment and the sovereign right of a state to regulate its investment sector. But it is either one or the other. If a country decides to retain its rights to freely choose its investment policies and does not provide for sufficient transparency and reliability, investors will make their own choice. Today, investment opportunities are numerous while the number of investors is limited.

Among parliamentarians, there are several approaches to investment issues. According to Gero Friedel, the majority of parliamentarians does not appreciate the added value of multilateral investment protection measures, especially as they remain cautious because of the debates surrounding the old Multilateral Agreement on Investments (MAI). Investment protection under regional agreements such as the future EPAs is sometimes not

seen as of central importance. However, in any move to EPAs development policy objectives should form the centre of attention and should not only serve to cushion the effects of liberalisation policies. In this regard, the challenge ahead is not so much in protecting investors but safeguarding the interests of the people directly affected by investments in ACP countries.

In Evita Schmieg's view, countries compete for investments and therefore need to provide clear, predictable and transparent rules for foreign investors. As was pointed out earlier, however, industrialised countries and the developing world are operating with a different set of investment policies. Therefore flexibility remains central: Industrialised countries should not simply impose their investment regimes within the multilateral negotiations over developing countries but should work towards the establishment of clear and strict rules that primarily serve the development interests of developing countries. Different possibilities to regulate investments should be acknowledged instead of being regarded as an obstacle.

10.3 Civil society participation

The report from the working group on civil society participation stressed that civil society comprises a variety of citizen groups with specific interests. As such civil society cannot have a representative. Thus consulting civil society most often involves dealing with different groups of interest. Even though the state of civil society participation in the EU-ACP partnership agreement at this stage is limited to consultations and does not extend to effective forms of participation, civil society has gained effective legitimacy as one of the new actors. The working group, subsequently, identified some key elements for a more coherent and close collaboration between north and south civil society groups:

- The EU has clear ideas on its economic options and objectives. The EU will therefore try to have a very narrow negotiating mandate contrary to the ACP. If civil society is to criticise the EU mandate, it has first of all to define objectives of negotiations and benchmarks on national levels as well as EU level.
- Thus civil society should have its own agenda and the capacity to negotiate. There is the need to build support from the larger public.
- At this stage civil society work should concentrate on the national level.
- There is need to raise awareness on the issue of capacity building, which might be more easily achieved at the national than at the regional level.
- Information is central to any capacity building component.
- One of the key elements mentioned in the discussions has been the monitoring process at all levels, including the national, regional and global level.
- Access to funding to support civil society participation is crucial. The Cotonou Agreement has provisions related to access to funds, however, in practice the modalities are still not clear.

Contribution from the floor pointed out that civil society should learn from previous experiences, especially from that of the Euromed agreements. The information component should come first but building a sustainable partnership would have to follow. At the ACP level, it is important to support policy oriented organisations and not only technical assistance organisations as is currently the case. Looking specifically as to how EU civil society can support ACP civil society, lobbying and public campaigns were mentioned as well as support in finding means of accessing funds. While it was agreed that EU and ACP civil society

should hold strategic meetings, concluding the discussion in the working group on civil society participation, the following seven key areas of EU-ACP collaboration were identified:

- Objectives of civil society participation should be social concerns and sustainability
- Information sharing and communication campaigns
- Awareness raising
- Structuring civil society more effectively
- Capacity building by pooling existing expertise in the north and in the south
- Building and elaborating strategic alliances such as the Africa Trade Network (ATN) and the Brussels-based Cotonou Monitoring Group (CMG)
- Access to funds

In addition, participants raised a number of open questions related to civil society participation that need to be addressed as part of any future move towards greater participation of civil society under the Cotonou framework:

1. How will the institutions (the Commission, the European Parliament, and the Council) encourage a meaningful participation of the civil society?
2. How will these institutions provide information so that civil society groups may engage more meaningfully?
3. Since distances within ACP and between the ACP and the EU are great, what kind of resources can / will the European institutions provide?
4. The general public must be better informed on the process between ACP and the EU. What are the institutions prepared to provide in this regard? How should this be done?
5. What role and place can civil society have in relation to official political in-

stitutions regarding the Cotonou Agreement?

In response to the questions and remarks mentioned, Gero Friedel outlined some of the difficulties the European Parliament itself faces in achieving a meaningful participation in economic decision-making processes. Even within the 15 national parliaments participation in the formulation of trade policies is generally weak, on the multilateral level, both concerning the WTO and the international financial institutions, it is virtually non existing. In order to integrate civil society more fully into the programming of the Cotonou provisions, the European Parliament provides an open forum. In addition, in the ACP-EU Joint Parliamentary Assembly especially trade unions and other economic and social partners could play a stronger role. However, the question regarding the identity of civil society remains open. Since it is a very diffuse area, defining civil society more precisely in legal terms is urgently needed to effectively organise democratic participation of civil society in the ongoing process.

From a member state's perspective, Evita Schmiege stressed that one has to address the fundamental problem of the lack of democratic control in European trade policy making in the context of a European Convention. Since various interest groups are represented in civil society it should be involved in close cooperation and be provided with sufficient information and opportunity for participation in the political process, although it lacks democratic legitimacy. Schmiege underlines that dialogue with civil society has constantly been growing and enlarging in recent years. Since there are high expectations on EPAs on official side to start a dynamic process of economic reform in ACP countries but which will impose, however, several adaptation costs, full participation of civil society becomes an important issue. First of all, fears and concerns should be heard at a very early stage, and secondly, a reform can only be successful if it is supported by a society at

large. Therefore civil society should be fully included into all levels of discussion during the negotiation process.

From the Commission's perspective, there was great appreciation for all of what had been said so far. It stated, however, that international trade negotiations should remain in the responsibility of governments that have a democratic mandate to deliver these tasks. In Falkenberg's view, the first challenge for civil society in any move towards EPAs is therefore first of all a national one. The second step should be regional (both within the EU and the ACP countries) involving the regional organisation of civil society to effectively influence the political process. He acknowledged that negotiations have to be as open and transparent as possible to ensure a direct flow of information including internet chats and other forms of direct dialogue. Institutions, however, can make documents public only after they have been adopted.

Gero Friedel added that democratic deficits will not be solved by the creation of internet chat opportunities alone. Distrust in the work of multilateral organisations is deeply rooted, as the experiences of Seattle and Doha have clearly shown. Therefore, establishing a way of "pseudo-democracy" will not be the right way to proceed.

A remark from the floor highlighted deficits in civil society participation within the programming exercise of ACP national country support strategies and the planned allocation of up to 15 percent of the allocation under the indicative programmes. The Commission assured that civil society will have frequent opportunities for participation, although not on a daily basis. It stated clearly that civil society consultations will be held continuously throughout the negotiations but that a workable interval has to be found. Concerning the funding available for civil society actors, the Commission underlined that programming is a joint exercise of ACP and the EU. Therefore, concrete proposals have to be identified before resources are allocated. According to

Falkenberg, civil society participation will receive increased attention from Brussels and meaningful project proposals will be fully supported by the Commission.

To a final intervention concerning the fiscal implications of any move towards EPAs and possible cost-benefit analysis to be conducted Falkenberg replied that the underlying problem is that the countries are supposed to move from state revenue collected at the border to state revenue collected internally, as is the case in developed economies, so as to reduce dependency of state budgets on tariff collection. This transition, however, has to be done gradually. In the Commission's view, the focus must lie on designing the appropriate systems in ACP countries itself and not on additional financial support coming from Brussels or from Europe. The European Parliament underlined the need for thorough cost-benefit analysis, the results of which should be evaluated during a first phase of negotiations on an all-ACP level. These exercises should be carried out on the level of all six ACP-regions.

SUMMARY

Negotiations on new trade and economic co-operation agreements between the EU and the 78 ACP countries, the so-called Economic Partnership Agreements (EPAs), will begin on September 27th this year. These negotiations, to be concluded by the end of 2007, will be conducted against the background of ongoing multilateral trade negotiations under the new WTO round, a number of intra-regional and bilateral negotiating processes on the ACP level as well as the current reform of the Common Agricultural Policy (CAP) and the reform of the EU Generalised System of Preferences (GSP) granting trade preferences to developing countries. All these processes continue in parallel and are highly inter-related. In spite of the limited capacity of ACP countries to follow all of these negotiations simultaneously, ACP countries are faced with the considerable challenge to negotiate EPAs that best serve their development objective of fostering poverty-focused forms of sustainable economic development. The international conference "*The Cotonou Agreement - New Perspective for European Trade Policy?*", organised jointly by terre des hommes Germany, World Economy, Ecology & Development (Weed) and the Friedrich - Ebert - Foundation, aimed at contributing to the current discussions on the future of EU-ACP trade relations. It should clarify key issues of concern and discuss appropriate development strategies for ACP countries to ensure that the forthcoming negotiations between the EU and ACP countries will best serve the ultimate aim of sustainable development within ACP regions.

Contributions to the first session of the conference examined some of the impacts and likely consequences of trade and investment liberalisation for ACP countries and regions. While trade liberalisation can provide stimuli for economic development in ACP countries, Klaus Schilder underlined that lessons learned

from trade liberalisation under structural adjustment programmes show quite clearly that environmental and social concerns have to be taken seriously. Only in this way positive development outcomes can be maximised and negative impacts on vulnerable parts of the population such as small-scale farmers or women be avoided. In any move towards new trade arrangements between the EU and ACP countries the biggest challenge ahead is constituted by the need to integrate the objectives of economic competitiveness, sustainable resource management and rural food security - in other words - by the need to build a partnership for development that is economically fair, environmentally sustainable and socially just. Referring to one of the ACP regions in closer detail, Malcolm Damon examined some of the problems and challenges the Southern African Development Community (SADC) will face under any move towards free trade with the EU. According to the analysis of the recent EU free trade agreement with South Africa, in particular the economically weaker BNLS countries (Botswana, Namibia, Lesotho, Swaziland) will carry a high burden of adjustment costs that need to be addressed in a timely and comprehensive manner. In conclusion, it appears that SADC countries are not fully prepared to start negotiations with the EU on EPAs, and will not be so unless regional integration efforts are consolidated and their concerns towards the introduction of reciprocal trade arrangements with the EU are fully taken into account. Looking at the experience of regional integration within the Caribbean, Lingson Cumberbatch noted that, while regional integration has made considerable progress, Caribbean producers still face a multitude of supply-side constraints that need to be addressed before a move towards greater reciprocity with the EU. In providing adequate support for the adjustment costs

and challenges of Caribbean economies, the EU will have to deliver on its promises of true partnership in the context of the Cotonou Agreement and on the value allegedly the Union places on their long-standing relationship with the ACP. In a final contribution to the first session, Bibiane Mbaye Gahamanyi examined the role of civil society as a new actor in the context of EPAs and their participation in the political dialogue. While civil society in ACP countries faces various constraints and limitations today, the current political stake for the ACP civil society is to assure meaningful participation of all national and regional actors in the field of development. Several important and strong recommendations from civil society have already been expressed in the ACP civil society action plan and need to be institutionalised in the coming months of negotiations.

A second session of the conference investigated economic co-operation under the Cotonou Agreement against the background of larger European trade policy objectives. In the view of Evita Schmieg, developing countries still have a lot to catch up in order to make multilateral trade liberalisation work for sustainable development. While support for developing countries is required in a number of areas, WTO rules and regulations itself should be revised in such a way as to better reflect the situation of developing countries, least developed countries (LDCs) in particular, and thus create a sound base for economic agreements between the EU and ACP countries. In a very concrete approach, Christopher Stevens subsequently examined how future EPAs might be related to the EU's goals concerning the new WTO negotiations both on market access for goods and on the new areas of international trade policy. He then set out a detailed analysis of areas of concern to ACP countries in the light of multilateral trade negotiations, and a comprehensive cost-benefit analysis of future EPAs to ACP countries. In conclusion, a detailed analysis of the economic situation of ACP

countries and regions is needed to address the question whether future EPAs will serve as building blocks or stumbling stones for future economic development in ACP regions. Along the same lines, Paul Goodison reviewed major issues of concern to ACP countries which will need to be addressed under any process of ACP-EU trade negotiations. Issues such as the effects of CAP reform on ACP economies, fiscal implications of EPAs, existing supply side constraints, the situation of LDCs or the scope of market access to the EU need to be addressed at the level of pan ACP-EU negotiations prior to the definition of the geographical basis for the negotiation of EPAs or other alternative trade arrangements between ACP countries and the EU. Sabina Voogd examined some of the linkages between negotiations on investment liberalisation at the multilateral level and related provisions in the section on trade-related issues within the negotiating directives for future EU-ACP EPAs. According to her view, negotiations on investment issues, both on the regional and multilateral level, should proceed in a balanced manner, taking due account of the development policies and objectives of host governments as well as their right to regulate in the public interest and the special development, trade and financial needs of developing and least developed countries. Outlining options for civil society participation under the Cotonou framework, Simon Stocker recalled that the Cotonou Agreement provides opportunities for ACP civil society to become more organised as a means to engage in future trade negotiations in a more co-ordinated way. He concludes that in order to address the challenges ahead civil society, both in the ACP and EU countries, will soon need to organise and make proposals for engagement within this co-operation framework that will create sufficient space for participation.

In the third conference session, thematic working groups on trade policy, investment policy and civil society participation under any new EU-ACP trade

arrangement presented key issues and open questions for discussion with political decision-makers. While participation and discussions during this policy dialogue session were quite lively, the need for a structured and institutionalised dialogue with civil society during the course of EU-ACP negotiations on future trade arrangements emerged quite clearly. Meanwhile, European civil society organisations have called upon the European Commission to further detail its plans to provide for continuous information and consultations of civil society, both within

the ACP and Europe, during the whole negotiating period.

The organisers expressed their hope that this international conference will serve as a stepping stone towards the greater involvement of civil society in the debate on future economic co-operation between the EU and ACP countries and underline their commitment to continued support towards achieving this objective throughout the coming negotiating process.

ZUSAMMENFASSUNG

Die Verhandlungen über neue Handels- und Wirtschaftskooperationsabkommen zwischen der EU und den 78 AKP-Staaten, die sogenannten Wirtschaftspartnerschaftsabkommen (WPA), werden am 27. September diesen Jahres beginnen und sollen bis Ende 2007 abgeschlossen werden. Diese Verhandlungen werden geführt vor dem Hintergrund laufender multilateraler Verhandlungen zu Handelsfragen, der neuen WTO-Runde, verschiedener intra- und bilateraler Verhandlungsprozesse in den AKP-Regionen sowie der aktuellen Reform der Gemeinsamen Agrarpolitik (GAP) und der Reform des europäischen Allgemeinen Präferenzsystems, das Entwicklungsländern Handelspräferenzen einräumt. All diese Prozesse verlaufen parallel und hängen eng miteinander zusammen. Angesichts der begrenzten Verhandlungskapazitäten der AKP-Staaten stehen diese Länder vor der Herausforderung, trotz der Mehrfachbelastung WPAs zu verhandeln, die möglichst optimal dem Entwicklungsziel der armutsorientierten nachhaltigen Entwicklung dienen.

Die internationale Konferenz „Das Cotonou-Abkommen – Eine neue Perspektive für die europäische Handelspolitik?“, organisiert von terre des hommes Deutschland, Weltwirtschaft, Ökologie

und Entwicklung (Weed) und der Friedrich-Ebert-Stiftung, hatte zum Ziel, zur aktuellen Diskussion über die zukünftigen EU-AKP Handelsbeziehungen beizutragen. Sie sollte Kernfragen und Bedenken herausarbeiten und angepasste Entwicklungsstrategien erörtern, um dazu beizutragen, dass die Interessen der AKP-Länder bei den anstehenden Verhandlungen adäquat berücksichtigt werden.

Die Beiträge zur ersten Sitzung der Konferenz beschäftigten sich mit den möglichen Auswirkungen von Handels- und Investitionsliberalisierung in den AKP-Staaten. Auch wenn die Liberalisierung des Handels durchaus Impulse für die ökonomische Entwicklung der AKP Staaten bieten kann, betonte Klaus Schilder, dass die Erfahrungen mit Handelsliberalisierung unter Strukturanpassungsprogrammen sehr deutlich machen, dass ökologische und soziale Bedenken ernstgenommen werden müssen. Nur so können positive Entwicklungsergebnisse maximiert und negative Auswirkungen auf gefährdete Gruppen der Bevölkerung, wie zum Beispiel Kleinbauern und Frauen, vermieden werden. Wie auch immer die neuen Handelsabkommen zwischen EU und AKP Staaten aussehen werden, die grösste Herausforderung stellt die Integration ökonomischer Wettbewerbsfähig-

keit, nachhaltigen Ressourcenmanagements und ländlicher Ernährungssicherung dar. Es geht also – in anderen Worten – um eine Entwicklungspartnerschaft, die ökonomisch fair, ökologisch nachhaltig und sozial gerecht ist.

Malcolm Damon bezog sich detailliert auf eine der AKP-Regionen und untersuchte die Probleme und Herausforderungen, vor denen die Southern African Development Community (SADC) im Falle eines Freihandelsabkommens mit der EU steht. Den Analysen des jüngsten EU-Freihandelsabkommens mit Südafrika zufolge sind es besonders die ökonomisch schwächeren "BNLS-Staaten" (Botswana, Namibia, Lesotho, Swasiland), die hohe Anpassungskosten zu tragen haben, für die sie frühzeitige und umfassende Unterstützung brauchen. Zusammenfassend kann man sagen, dass die SADC-Staaten noch nicht bereit sind für WPA-Verhandlungen mit der EU und dies auch nicht sein werden, solange regionale Integrationsbemühungen sich nicht konsolidiert haben, und ihre Bedenken gegenüber reziproken Handelsabkommen mit der EU nicht ernstgenommen werden.

Lingston Cumberbatch beschäftigte sich mit den regionalen Integrationserfahrungen in der Karibik und konstatierte, dass trotz nennenswerter Fortschritte karibische Produzenten noch immer mit einer Vielzahl von Problemen auf der Angebotsseite konfrontiert sind, die vor jeder weiteren Handelsliberalisierung und reziproken Handelsabkommen mit der EU angegangen werden müssen. Durch angemessene Unterstützung der karibischen Ökonomien bezüglich der Anpassungskosten weiterer Marktöffnungen sollte die EU ihrer eigenen Programmatik von „echter Partnerschaft“ im Rahmen des Cotonou Abkommens und ihrer Wertschätzung der langjährigen Beziehungen mit den AKP-Staaten Substanz verleihen.

Zum Abschluss der ersten Runde untersuchte Bibiane Mbaye Gahamanyi die Rolle der Zivilgesellschaft als neuem Akteur im Rahmen der WPA und ihre Partizipation im Politikdialog. Da die Zivilgesellschaft in den AKP-Staaten einer

Reihe von Beschränkungen unterliegt, besteht die aktuelle politische Herausforderung darin, umfassende Partizipationsmöglichkeiten für alle nationalen und regionalen Akteure in Entwicklungsfragen zu erreichen. Einige wichtige Empfehlungen der Zivilgesellschaft wurden bereits im Aktionsplan der AKP-Zivilgesellschaft zum Ausdruck gebracht und müssen in den folgenden Verhandlungsmonaten umgesetzt werden.

Eine zweite Sitzung der Konferenz betrachtete Fragen der ökonomischen Kooperation im Rahmen des Cotonou-Abkommens vor dem Hintergrund allgemeinerer Ziele europäischer Handelspolitik. Nach Meinung Evita Schmieg's haben Entwicklungsländer noch eine Menge aufzuholen, damit multilaterale Handelsliberalisierung überhaupt im Sinne von nachhaltiger Entwicklung funktionieren kann. Während Unterstützung für Entwicklungsländer in verschiedenen Bereichen nötig ist, sollten die WTO-Regeln selbst so überarbeitet werden, dass sie besser die Situation der Entwicklungsländer, insbesondere der am wenigsten entwickelten Länder (LDCs), widerspiegeln. Auf diese Weise kann eine solide Grundlage für Wirtschaftsabkommen zwischen EU und AKP-Staaten geschaffen werden.

Im Folgenden fragte Christopher Stevens, in welchem Verhältnis zukünftige WPA zu den Zielen der EU in den WTO-Verhandlungen stehen, insbesondere hinsichtlich weiterer Marktöffnung sowie der neuen Themen der internationalen Handelspolitik. Detailliert analysierte er Hauptproblembereiche für AKP-Staaten in multilateralen Handelsverhandlungen und führte eine umfassende Kosten-Nutzen-Analyse von zukünftigen WPA für AKP-Staaten durch. Abschließend forderte er Detailanalysen der ökonomischen Situation in den AKP-Staaten, um eine Antwort auf die Frage zu finden, ob zukünftige WPA eher als "stumbling block" oder "stepping stone" für ökonomische Entwicklung in den AKP-Regionen gesehen werden müssen.

Paul Goodison argumentierte ähnlich und konzentrierte sich auf sieben Problembereiche, die für AKP Staaten in zukünftigen Verhandlungen mit der EU in jedem Fall von Bedeutung sein werden. Es handelt sich dabei um Bereiche wie die Auswirkungen einer Reform der Gemeinsamen Agrarpolitik (GAP) auf AKP-Ökonomien, Auswirkungen der WPA auf öffentliche Einnahmen, Engpässe auf der Angebotsseite, die Situation der LDCs oder das Ausmaß des Marktzugangs zum EU-Markt. Diese müssen im Rahmen übergreifender AKP-EU - Handelsverhandlungen diskutiert werden, bevor überhaupt die regionalen Verhandlungspartner für WPA oder alternative Handelsabkommen festgelegt werden.

Sabine Voogd stellte die Verbindung zwischen den multilateralen Verhandlungen zu Investitionsliberalisierung auf der einen und den Vorschlägen in den entsprechenden Artikeln der EU-Verhandlungsdirektive für zukünftige WPA auf der anderen Seite her. Ihrer Meinung nach sollten Verhandlungen über Investitionsregelungen Politik und Entwicklungsziele der Gastländer sowie deren Recht, Regulierungen im öffentlichen Interesse selbstbestimmt zu gestalten, berücksichtigen, und den besonderen Entwicklungs-, Handels und Finanzbedürfnissen von Entwicklungsländern gerecht werden.

Mit den Möglichkeiten zivilgesellschaftlicher Partizipation im Rahmen des Cotonou-Prozesses setzte sich Simon Stocker auseinander. Er verwies darauf, dass das Cotonou-Abkommen der Zivilgesellschaft in den AKP-Staaten die Gelegenheit zu besserer Vernetzung und Kooperation bietet, um so zukünftig koordinierter Einfluss auf Handelsverhandlungen nehmen zu können. Um den Herausforderungen durch die EU-AKP-Verhandlungen gerecht zu werden, sollte sich die Zivilgesellschaft in Europa wie in den AKP-Staaten schnellstens organisieren und eigene Vorschläge und Konzepte für ihr Engagement in diesem Prozess entwickeln.

Im dritten Teil der Konferenz wid-

meten sich Arbeitsgruppen den Themen Handelspolitik, Investitionspolitik und Partizipation der Zivilgesellschaft im Rahmen der WPA-Verhandlungen. Einige der Kernprobleme wurden diskutiert und Fragen für die anschließende Diskussion mit den politischen Entscheidungsträgern entwickelt. Sehr deutlich wurde dabei der Bedarf nach einer institutionalisierten Einbindung und einem kontinuierlichen Dialog zwischen Politik und Zivilgesellschaft in den EU-AKP-Verhandlungen. Europäische zivilgesellschaftliche Gruppen haben die Europäische Kommission aufgefordert, einen detaillierten Plan vorzulegen, wie die kontinuierliche Information und Konsultation der Zivilgesellschaft in Europa wie auf AKP-Ebene über den gesamten Verhandlungsprozess hinweg gewährleistet werden soll.

Die Organisatoren hoffen, dass diese internationale Konferenz als "stepping stone" zu einer besseren Einbindung der Zivilgesellschaft in die Debatte um die Form der zukünftigen Wirtschaftskooperation zwischen EU und AKP-Staaten dienen konnte, und werden dieses Ziel weiterhin verfolgen.

AUTHORS

Lingston Cumberbatch

former ambassador to Trinidad and Tobago, is now working as a consultant on trade and development matters in Brussels. In addition he is chairman of the board of the European Centre for Development Policy Management (ECDPM), based in Maastricht, Netherlands....

Contact: lingston.cumberbatch@skynet.be

Malcolm Peter Damon

Is director of the Economic Justice Network of the Fellowship of Christian Councils in Southern Africa (FOCCISA) and is based in Cape Town, South Africa.

Contact: ejnetwork@mweb.co.za

Bibiane Mbaye Gahamanyi

Is in charge of the Enda Policy Advocacy Programme for the implementation of the Cotonou Agreement and is particularly active in civil society capacity building. She has got a background in International Human Rights Law with an interest in the promotion of economic, social and cultural rights.

Contact: Syspro2@enda.sn

Paul Goodison

director of the Brussels-based European Research Office (ERO) has been working for several years on EU-ACP relations, in particular with a regional focus on Southern Africa.

Contact: 2pg@pandora.be

Klaus Schilder

is project manager for EU North-South Policy at World Economy, Ecology & Development (Weed) in Bonn, Germany. Within the last years, Weed has been focusing its attention on regional and bilateral trade and investment agreements of the European Union, and has been following the EU-ACP negotiations

that lead to the conclusion of the Cotonou Agreement quite intensively.

Contact: klaus.schilder@weedbonn.org

Evita Schmieg

is head of the Globalisation, Trade and Investment Division in the Federal Ministry for Economic Co-operation and Development. She is an economist by profession with several years of experience in the area of trade and development in the Ministry as well as in the European Commission.

Contact: schmieg@bmz.bund.de

Christopher Stevens

Is a fellow at the Institut of Development Studies, University of Sussex, UK. He specialises in the political economy of north-south trade relations and, in particular, the external impact of EU policies and the role of developing countries in the WTO. He has written widely on these issues and has advised a range of trade negotiators in Africa and the Caribbean as well as international organisations.

Contact: C.Stevens@ids.ac.uk

Simon Stocker

is director of European Solidarity Towards Equal Participation of People (Eurostep), a network of European NGOs based in Brussels, closely monitoring EU-ACP negotiations.

Contact: Sstocker@eurostep.org

Sabina Voogd

Works as researcher for SOMO, the Dutch Centre for Research on Multinational Corporations and is focused on WTO and investment agreements in the Southern African region. Before SOMO she has worked for Greenpeace and was very active in the campaign around MAI.

Contact: s.voogd@somo.nl

SELECTED RESOURCES

ACP-EU Joint Parliamentary Assembly (2002) *Cape Town Declaration on the Forthcoming ACP-EU Negotiations with a View to New Trading Arrangements*. ACP-EU 3382/02/fin.

ACP-Groupe (2002) *Draft ACP Guidelines for the Negotiations of Economic Partnership Agreements*. Brussels, 21. June 2002 (available at: <http://www.acpsec.org/gb/council/oriente.html>)

Bilal, San (2001) *The Future of ACP-EU Trade Relations: Overview of the discussions on the Forthcoming Agenda*. ECDPM an ODI background note, November 2001.

COMESA Secretariat (2001) *Assessing the Impact of the EU-SA Free Trade Agreement on Eastern and Southern Africa*. Report by Imani Development, October 2001.

COMESA Secretariat (2002) *Trade Policy Compatibility and the Impact Assessment of Economic Partnership Agreements and Preliminary Adjustment Scenarios*. Executive Summary of a draft discussions paper.

COMESA (2002) *First Ministerial Meeting on Economic Partnership Agreements, the Regional Strategy Paper and the COMESA Fund*. COMESA Report COM/M/RI/1/2, February 2002

Cotonou Monitoring Group (2002) *Commission Draft Negotiating Directive for Future ACP-EU Trade Negotiations - Initial Comments and Proposals*.

Davies, Rob and Mbuende, Kaire (2002) *Beyond the Rhetoric of Economic Partnership Agreements – issues to be Addressed in ACP-EU Trade Negotiations*.

ECDPM (2001) *Cotonou Infokit - The New ACP-EU Partnership Agreement*. Available on the internet: www.ecdpm.org/en/cotonou/index.htm

European Commission (EC) (2002): Draft recommendation authorizing the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions, dated 9. April 2002. Available on the internet: <http://www.epawatch.net>

European Research Office (2001) *Trade Dimension of the Cotonou Agreement and Reform of the EU Common Agricultural Policy*. Discussion paper, October 2001.

European Research Office (2002) *The Commission's Approach to Future ACP-EU Trade Negotiations: A Critical Analysis*. Beyond Cotonou Series, February 2002.

European Research Office (2002) *Lessons for the Forthcoming ACP-EU Negotiations Arising from the Southern African Experience*. Beyond Cotonou Series, May 2002.

EU-ACP (2000) *ACP-EU Partnership Agreement - The Cotonou Agreement*. Available on the internet: http://europa.eu.int/comm/development/cotonou/agreement_en.htm

European Commission (1997) *Green Paper on the Relations between the European Union and the ACP Countries on the Eve of the 21st Century: Challenges and Options for a New Partnership*.

European Commission (2001) *Orientalions on the Qualification of ACP Regions for the Negotiation of Economic Partnership Agreements*. Commission Staff Working Paper.

Grynberg, Roman and Onguglo, Bonapas (2002) *A Development Agenda for Economic Partnership Agreement between the EU and the Pacific ACP (PACP)*. Concept paper.

Gunessee, Satiawan (2001) *Negotiation of Economic Partnership Agreement under the ACP-EU Partnership Agree-*

ment: An All-ACP-EU EPA Option. Non-paper by the Ambassador of Mauritius, December 2001.

Gunessee, Satiawan (2002) *Negotiations of Economic Partnership Agreements - Fundamental Objectives, Guiding Principles, WTO Compatibility and resources.* Non-paper by the Ambassador of Mauritius, May 2002.

Head, Judith (1999) *Ek Het Niks: The Impact of European Union Policies on Women Canning Workers in South Africa.* terre des hommes, Osnabrück.

Oyejide, Ademola and Njinkeu, Dominique (2001) *African Preparations for Trade Negotiations in the Context of the ACP-EU Cotonou Partnership Agreement.* African Economic research Consortium.

Stevens, Chris and Kennan, Jane (2000) *Analysis of EU Trade Arrangements with Developing and Transition Economies.* Institute of Development Studies, August 2000.

terre des hommes, KOSA & Weed (1999) *Farewell to Lomé. The Impact of Neo-Liberal EU Policies on the ACP Countries,* Documentation of an international Hearing and Workshop Königswinter / Bonn, 23.-25. April, 1999.

Wellmer, Gottfried (1998) *On the Effects of European Beef Exports to South Africa on Communal Farmers in Namibia. A Case Study on the Coherence of European Policy.* Diakonisches Werk der EKD, Echterdingen.

ANNEX I

DRAFT ACP GUIDELINES FOR THE NEGOTIATIONS OF ECONOMIC PARTNERSHIP AGREEMENTS¹

Introduction

1. The ACP-EU Partnership Agreement, which was signed in Cotonou in June 2000 (Cotonou Agreement), provides for the conclusion between the ACP and the EU of "new World Trade Organisation (WTO) compatible trading arrangements, removing progressively barriers to trade between them and enhancing co-operation in all areas relevant to trade" (Article 36(1)). In this regard, Economic Partnership Agreements (EPAs) will be negotiated during the period starting from September 2002 until 31 December 2007. Pursuant to Article 37(5) of the Cotonou Agreement, negotiations of EPAs will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group, taking into account regional integration processes within the ACP.

2. The Cotonou Agreement establishes a comprehensive framework for ACP-EU relations. At the centre of the partnership is economic development, the reduction and eventual eradication of poverty, and the smooth and gradual integration of ACP States into the world economy. The negotiations of EPAs shall take account of and be coherent with the objectives and principles of the Cotonou Agreement because all the different pillars of the Cotonou Agreement should be mutually reinforcing and supportive.

3. Moreover, EPAs will be negotiated at a time when many ACP States will also be involved in other negotiations, whether at the bilateral, regional, sub-regional or multi-lateral level. As a result of the WTO Doha

Ministerial Conference, negotiations are currently taking place in the WTO in a number of areas and are expected to be concluded by 1 January 2005. Some ACP States are also participating in negotiations at the regional level, such as the negotiations of the Free Trade Area of the Americas (FTAA). At the same time, many ACP states are involved in regional integration processes which, in some cases, are expected to lead to the establishment of a customs union or a deeper form of regional integration. Further, the New Economic Partnership for Africa's Development (NEPAD) has been launched at the level of the African continent.

4. Despite their diversity, ACP States share a number of common interests in the economic, social, political and cultural fields and have been united as a group since the first Lomé Convention was signed in 1975. They have negotiated the successive Lomé Conventions and the Cotonou Agreement together. In view of the complexity and demanding nature of the forthcoming negotiations with the EU, ACP unity and solidarity, which have been reaffirmed at the highest political level during the First and Second Summits of ACP Heads of State and Government, will be most critical.

5. This document sets out the approach that the ACP should adopt to the EPA negotiations and the principles which should inform the negotiations. It also lays down the strategic and specific objectives which should be pursued by the ACP, the negotiating structure and the time line for the negotiations.

6. As the negotiations proceed, it will be necessary to take stock of progress, following which this negotiating guidelines might have to be reviewed.

¹ This document (ACP/61/056/03 Rev.6) was published on 21. June 2002. The latest draft of the ACP negotiating guidelines is available from the website of the ACP secretariat at <http://www.acpsec.org/gb/council/oriente.html>

Section I: ACP approach to the EPA negotiations

7. One of the key issues for ACP States is the transformation of their economies so as to promote sustainable development and thus eradicate poverty, whilst increasing their share of world trade. Development and trade are most important for ACP States.

8. The process of establishing a new economic and trade co-operation arrangement with the EU will by no means be simple. It will entail, on the part of the ACP, taking into account of the development strategies of ACP States. Thus during the negotiations, the ACP Group will establish a link between trade, development, investment and poverty eradication.

9. As regards commitments during negotiations for EPAs, ACP member states will keep in view what is taking place with respect to:

- a) negotiations in the WTO which are expected to be concluded by 1 January 2005;
- b) EU enlargement which is expected to take place in 2004;
- c) the reform of the EU's Common Agricultural Policy (CAP);
- d) review of the EU GSP in 2004;
- e) regional integration processes in various ACP regions/sub-regions which are expected in some cases to result in the establishment of customs unions; and
- f) trade negotiations between some ACP countries and third parties, and between the EU and third parties.

10. Moreover, EPAs are expected to be notified to the WTO. It will therefore be necessary for the ACP to participate actively in the current negotiations in the WTO so as not only to inject flexibility in the WTO rules, especially those relating to regional trading agreements and to have the development dimension better taken into account, but also to make the future EPAs compatible with the WTO.

11. ACP States also need to build or develop capacity not only to negotiate but also to undertake an independent analysis of the implications of developments at the international and possibly at the inter-regional, regional and national levels, that will have a

bearing on the negotiations. Further, in-depth studies would have to be carried out not only at the regional level, but also at the national level to determine the impact of trade liberalisation on the economies of individual ACP States, including on various sectors of their economies, the type of adjustments they would have to make, the costs of those adjustments, and the measures they should take to benefit from EPAs.

12. The negotiations should therefore be conducted in two phases:

During the first phase, negotiations will take place at an all-ACP level with the EU with a view to concluding an all-ACP-EU Agreement, focusing on objectives and principles of EPAs and issues of common interest to all ACP States, whilst allowing ACP States to undertake necessary back-up research and capacity building actions. This first phase could extend from September 2002 through 2003 when a review could take place. The negotiations in the second phase could start in September 2003. The following list of issues could be discussed under Phase I: principles, objectives, scope and content, special and differential treatment, financing the cost of adjustment, rules of origin, standards, sanitary and phytosanitary measures, customs and administrative co-operation, framework agreement on trade in services, development of the service sectors, fisheries, treatment of trade-related issues such as competition policy, investment promotion and protection, trade and environment, institutional matters (including the Council and the future of Joint Assembly, CDE, CTA), modalities for the phasing of negotiations and the resultant implementation issues, dispute settlement mechanisms, safeguard measures, legal status of the Agreement, support measures to overcome supply constraints, capacity building, treatment of commodity protocols, trade facilitation, evaluation of the impact of CAP reform on agricultural exports, WTO-compatibility, product coverage and transitional periods and arrangements with respect to the establishment of the FTA, investment promotion schemes, including measures to promote the transfer of technology, know-how and skills.

In phase 2, the issues will cover, inter alia, tariff negotiations and any other specific sectorial commitments at national or regional level as the case may be and issues of specific interest to ACP countries or regions.

Section II: Principles

13. The following principles should inform the EPA negotiations:

Sustainable development-oriented EPAs

14. Forty out of the seventy-eight ACP countries are least-developed countries (LDCs). The majority of the remaining thirty-eight states are on the fringes of the LDCs when viewed in terms of the proportion of the population living under the poverty line and the vulnerability of some of the economies, particularly those of the small, island and landlocked countries. Development must therefore be at the core of the EPA negotiations.

15. ACP States have over the years established regional co-operation and integration arrangements as a process to aid their development initiatives and position the regional groupings in the competitive global economy. Internal to these various regional integration arrangements are "special and differential" facilities accorded to countries within the regions that are characterised as less developed. These arrangements have provided a factor of sustainability for the regional integration processes. These development objectives must be reflected in the negotiation process.

16. The ACP should be guided by the overriding principle of unity and solidarity in their approach to the EPA negotiations. On issues of common interest to all ACP States, it will be easier for the ACP to secure a better deal from the EU if they negotiate collectively than if they negotiate at an individual, regional or sub-regional level. As was evident during the negotiations of the successive Lomé Conventions and the Cotonou Agreement and more recently during the WTO Doha Ministerial Conference, the unity of the ACP Group is its force and its solidarity constitutes its negotiating strength. The ACP should continue to work in unity and with cohesion in Geneva, in order to promote and preserve ACP interests in the post-Doha work programme of the WTO. In order to participate actively and constructively in the process, the ACP should prepare and submit concrete proposals for the development of WTO rules on regional trading agreements, as well as on the horizontal and specific

coverage of Special and Differential Treatment, given the importance of the WTO process to the negotiation of EPAs. It will also be easier for ACP States to exert political pressure on the EU during the negotiations if they act together rather than individually. Furthermore, negotiations at national and regional levels should make it possible to strengthen regional integration initiatives within the ACP.

17. With a view to protecting and promoting the interests of all ACP States, the ACP Group should strive to maintain its cohesiveness throughout the EPA negotiations.

18. It has been agreed in the Cotonou Agreement that economic and trade co-operation shall be based on "*a comprehensive approach which builds on the strengths and achievements of the previous ACP-EC Conventions*" (Article 35(1)). The EU has also agreed that, on its side, "*trade liberalisation shall build on the acquis and shall aim at improving current market access for the ACP countries through inter alia, a review of the rules of origin*" (Article 37(7)).

19. Further, under Article 36(4) of the Cotonou Agreement, the ACP and the EU "*reaffirm the importance of the commodity protocols, attached to Annex V of this Agreement. They agree on the need to review them in the context of the new trading arrangements, in particular as regards their compatibility with WTO rules, with a view to safeguarding the benefits derived therefrom, bearing in mind the special legal status of the Sugar Protocol*".

20. Therefore, irrespective of the outcome of the EPA negotiations, with respect to trade relations with the EU, no ACP State should be worse off in the post-2007 period than under the current ACP-EU trade arrangements.

21. Moreover, given the possible adverse effect of reciprocity on domestic production and fiscal stability in ACP States, the latter cannot a priori accept to provide reciprocity in EPAs with the EU. In view of the differences in the level of development between the ACP States and the EU, the ACP cannot be required to make the same level of commitments under EPAs as the EU, particularly as regards market access.

WTO-compatibility

22. Current WTO rules are inherently unbalanced against the development needs of ACP States. In accordance with para. 9 above, the ACP will keep in view what is being done in the WTO in the context of the Doha Work Programme with a view to:

- a) clarifying and improving WTO rules covering regional trading agreements between developed and developing countries;
- b) taking adequately into account the development dimension in WTO rules; and
- c) operationalising and making legally binding in the WTO existing and new provisions on special and differential treatment. This will then enable ACP States to be in a position to agree to EPAs that are compatible with WTO rules then prevailing. Furthermore, the ACP should urge the EU to support its position.

23. The provision of special and differential treatment to ACP States must be an essential consequence of the differentiation between the ACP and the EU based on equity and recognising their different levels of development.

24. Moreover, in accordance with Article 35(3) of the Cotonou Agreement, special treatment should be given to LDCs and to vulnerable small, landlocked and island countries.

25. In view of the level of development of ACP States and their development and economic needs, there should be flexibility on the EU side towards the ACP during the negotiations.

26. Moreover, more flexibility should be injected in WTO rules to make the future EPAs compatible with the WTO.

27. EPAs will have significant implications for the socio-economic and political fabric of ACP States. The positive impact of EPAs needs to be maximised and their adjustment costs minimised so that their implementation is sustainable. In addition, EPAs should result in trade creation and not in trade diversion so as to avoid any welfare loss.

28. Sustainability should be a guiding principle and should be viewed in terms of:

- a) the adjustment costs of EPAs;
- b) the social and political implications of EPAs;
- c) the institutional and human resource capacities of ACP States; and
- d) the stability of ACP States.

29. It is essential for ACP States to maintain overall consistency in their development strategies and to adopt a coherent position in the various negotiations in which they are involved, whether with the EU, in the WTO, at the regional/sub-regional level or with third countries, so that they can derive the best possible results from the EPA and other negotiations.

30. Article 35(2) of the Cotonou Agreement states that *“Economic and trade co-operation shall build on regional integration initiatives of ACP States, bearing in mind that regional integration is a key instrument for the integration of ACP countries into the world economy”*. Early all ACP states are currently involved in regional integration processes which are of varying degrees of intensity. If these processes are not to be stifled or undermined, they should have precedence over EPAs for any trade liberalisation commitment vis-à-vis the EU. ACP states must be allowed to first consolidate their own regional integration processes. Moreover, they do not have the capacity to liberalise in parallel and concurrently with the EU.

31. EPAs should therefore support the ACP regional integration processes/initiatives based on the principle of sequencing and not undermine them.

32. EPAs will have to establish their legitimacy in ACP states, particularly as regards their contribution to the sustainable development of those countries. In this regard, it will be, as a matter of principle, essential that the negotiation process be paralleled by concerted efforts to generate within the ACP and EU States:

- involvement of all stakeholders in the negotiation process and public support for the negotiations and outcome of those negotiations;
- public scrutiny of the negotiations, including parliamentary follow-ups;

- creation of a level-playing field in terms of capacities to negotiate (including levelling the costs of the negotiation process);
- negotiation procedures which are inclusive and transparent.

Additionality of resources and support for adjustment

33. As a result of the implementation of EPAs, ACP countries will face a new set of adjustment difficulties and challenges such as revenue loss, unemployment, the upgrading of productive structures and human resources and the building of the requisite institutional capacity. Additional resources will have to be provided to the ACP to assist them in meeting the inevitable adjustment costs.

The EPA negotiation process should aim at:

- a) creating a special economic and trade compact in terms of:
 - setting up an adjustment compensation fund through the provision of additional resources, with rapid and flexible disbursement procedures;
 - addressing, inter alia, supply-side constraints, diversification, improving productivity and competitiveness;
 - support for promotion of trade;
 - strengthening product-specific export corridors;
 - strengthening trade governance; etc.
- b) attracting FDI through resource allocation for investment promotion / facilitation, conclusion of investment protection and double taxation agreements, in addition to the creation of an enabling environment.

Section III: Objectives

A:

34. The strategic objectives of the ACP Group should be to:

- a) achieve sustainable development and eradication of poverty in ACP States and to foster their smooth and gradual integration into the world economy. In this regard, development-oriented EPAs should be concluded.

- b) achieve sustained economic growth, develop the private sector, increase employment, and improve access to factors of production as well as securing improved and beneficial market access.
- c) enhance the production, supply and trading capacity of ACP countries and their capacity to attract investment as well as strengthen the ACP countries' trade and investment policies.
- d) reduce the dependence of ACP States on the production of primary products and natural resource-based sectors through diversification and increased value-added.
- e) bring about the structural transformation of ACP States into knowledge-based competitive economies capable of facing the challenges of globalisation, exploiting new market access opportunities in the EU, the ACP regions and in the world at large, and attracting substantial investment.
- f) address obstacles to the exports of ACP goods and services to the EU market and as regards their domestic production, and in particular problems related to physical infrastructure of ports, internal waterways, rail, roads, air and communication links and the various legal and administrative regimes for trade administration.
- g) foster inter-linkage and complementarity between development strategies supported by the EU, and economic and trade co-operation to make them mutually reinforcing, particularly as regards economic and trade reforms, factors that favour investment, regional co-operation and integration processes, sectorial policies and the development of capacities in the field of trade. EPAs should be consistent with and contribute to the strengthening of regional integration initiatives.
- h) secure the underwriting by the EU of the costs of adjustment associated with the implementation of EPAs through the creation of a financial facility additional to and distinct from the EDF.
- i) establish a mechanism that will contribute to a durable solution for the problem of external indebtedness of ACP countries.

B. Specific objectives

35. The specific objectives to be pursued by the ACP have been developed to cover the two phases of negotiations as defined in para. 12 above.

Trade issues

a) Market access

The following principles would be kept in view during the first phase, but would guide the negotiations that would take place during the second phase at national or regional level or in any other configuration to be decided by the ACP:

- To secure a guaranteed access to the EU market for exports from all ACP countries, free of customs duties and other prohibitive taxes and without any quantitative restrictions or measures having equivalent effect, taking however into account existing Commodity protocols.
- To secure duty- and quota-free market access for essentially all products for all ACP LDCs, as reflected in Article 37(9) of the Cotonou Agreement.

Agriculture:

- To improve the market access by, inter alia, addressing export subsidies and domestic support, for all agricultural products originating from ACP States, while preserving existing preferential arrangements. Under Article 36(4) of the Cotonou Agreement, the ACP and the EU *"reaffirm the importance of the commodity protocols, attached to Annex V of this Agreement. They agree on the need to review them in the context of the new trading arrangements, in particular as regards their compatibility with WTO rules, with a view to safeguarding the benefits derived therefrom, bearing in mind the special legal status of the Sugar Protocol."*
- To negotiate for increases in the existing quotas under the commodity protocols in order to accommodate new entrants to those protocols. Redistribution of existing quotas would lead to some member countries becoming worse off, much against the spirit of the Cotonou Agreement.
- To renegotiate the existing ACP internal administrative arrangements in order to restore lost quotas of the Sugar Protocol signatory States and allow for a more flexible and equitable allocation mechanism to zero quota holders under the Sugar Protocol.
- To address the concerns of ACP countries, in particular those of LDCs, small

island developing states (SIDS), landlocked countries, net-food importing and heavily indebted non-LDCs, small economies and single commodity producers as well as non-trade concerns such as rural development and preservation of the environment.

Trade in Services:

- To strengthen the capacity, efficiency and competitiveness of ACP countries in the supply of services of export interest to them, in particular labour, business, distribution, financial, tourism, cultural and construction and related engineering services, air transport and communications, among others, with a view to increasing the value and the volume of their trade in goods and services.
- To improve access to the EU of services originating in ACP countries, particularly in mode 4 relating to the movement of natural persons.
- To develop effective measures for implementation of GATS Article IV with a view to increasing ACP participation in world trade in services through, inter alia, access to technology; access to distribution channels and information networks; and the liberalisation of market access in sectors and modes of supply of export interest to the ACP.

b) Rules of origin

- To develop an improved and simplified system of rules of origin, in order to facilitate smooth exchange of goods, without creating unnecessary obstacles to trade, for goods originating from the ACP into the EU markets as well as for products originating from the EU into the ACP markets.
- To ensure that the rules of origin contribute to regional integration and to the preservation of preference margins.

c) Customs procedures/trade facilitation

- To simplify and harmonise customs legislations and procedures at national and regional levels, in order to facilitate trade and reduce administrative costs.
- To design effective systems to detect and combat fraud and other illicit customs activities without creating unnecessary obstacles to trade.

- To create and implement mechanisms to exchange information on customs matters within the ACP, and between the ACP and the EU.
- To promote customs mechanisms and measures that ensure operations are conducted with transparency, efficiency and integrity.

d) Safeguards

With a view to enabling ACP countries to protect their domestic industries in case increased imports from the EU cause or threaten to cause injury to their domestic industry, appropriate safeguard measures should be negotiated. The provisions on safeguard should provide for special and differential treatment for ACP countries.

Trade-related issues

Any commitment made by the ACP in respect of trade-related issues shall take account of the outcome of the discussions or negotiations in the WTO on those issues.

- To seek the strengthening of ACP countries' capacity to handle all areas related to trade, including, where necessary, improving and supporting the institutional framework.

a) Competition policy

- To assist ACP states and regions to develop the necessary legal and administrative infrastructure and pre-requisites to deal with competition policy.
- To develop effective and sound national and regional competition policies and rules as a means for improving and securing an investment friendly climate, a sustainable industrialisation process and transparency in the access to markets.
- To ensure that appropriate mechanisms may be implemented and maintained by ACP States to avoid their domestic firms and enterprises from being destabilized by foreign firms and to address the restrictive business practices of multinational corporations.

b) Intellectual property rights

- To ensure that the benefits of intellectual property regimes are equitably

shared between the owners and users of technology.

- To develop an intellectual property protection regime that encourages innovation and technological development in a manner that is also conducive to meet public and social policy objectives and transfer of technology to ACP states.
- To develop mechanisms that provide for the disclosure of sources of traditional knowledge and genetic resources used in inventions.
- To develop mechanisms that provide for the protection of traditional knowledge, including expressions of folklore.
- To develop mechanisms that prevents biopiracy.
- To ensure that intellectual property protection does not prevent access to social services.
- To ensure that the intellectual property regime developed does not exclude collective or regional arrangements for the ownership or use of intellectual property, particularly to meet public or social objectives.
- To develop mechanisms that do not exclude small entities from being able to enforce their intellectual property rights, particularly in other jurisdictions.
- To seek the application of meaningful incentives by the EU and its Member States for EU enterprises to transfer technology to ACP states.

c) Standardisation and certification

- To prevent and eliminate unnecessary technical barriers to trade.
- To reduce differences between the ACP and the EU in the field of standardisation, certification and quality assurance so as to facilitate trade.
- To secure support for ACP capacity building initiatives in the management of technical regulations, conformity assessment, metrology and standardisation, including in the setting up of certification institutions.
- To develop functioning and co-operation links between ACP and European standardisation, conformity assessment and certification institutions.
- To conclude, over time, mutual recognition agreements in sectors of mutual economic interest.

- d) Sanitary and phytosanitary measures
- Sanitary and phytosanitary (SPS) measures should not be used as a means of arbitrary discrimination or as disguised restrictions to trade.
 - To develop a mechanism for co-ordination, consultation and exchange of information as regards notification and application of proposed SPS measures, whenever these measures might affect the interests of either the ACP or the EU.
 - To secure support for capacity building initiatives for the ACP so that they can meet the SPS measures of the EU which are increasingly becoming stringent.
 - To take appropriate measures so as to minimise the extra costs placed on ACP producers and exporters to comply with EU SPS measures.
- e) Trade and environment
- The ACP may reaffirm their commitment to implement environmental standards as defined by the relevant international conventions, taking into account the relevant discussions in the WTO.
- f) Trade and labour standards
- In the negotiations of EPAs with the EU, ACP states may reaffirm, in accordance with Article 50 of the Cotonou Agreement, their commitment to the internationally recognised core labour standards, as defined by the relevant ILO Conventions.
- other kinds of development needs requiring EU support.
- a) Supply-side constraints
- In view of the high dependence of many ACP states on the export of one or more commodities, to take measures to comprehensively address the supply-side constraints faced by ACP states, which affect their competitiveness, including strengthening public utilities, infrastructure and other development tools for the private sector, institutional and policy frameworks, and improving labour productivity.
- b) Transport
- To secure support for ACP states' efforts to develop and promote cost-effective and efficient maritime transport infrastructure and services and other forms of transports, including air and land transport and inland waterways, with a view to increasing the participation of ACP operators in intra-ACP, regional and international trade.
- c) Energy
- To secure support for the development of energy in ACP states, including electrification and distribution to rural areas.
- d) Technologies, including information and communication technologies
- To facilitate technology partnership and secure support for capacity building.
 - To step up co-operation in this area, directed in particular towards greater complementarity and harmonisation of communication systems, at national, regional, inter-regional and international level and adaptation to new technologies.
 - To enable persons of ACP countries to easily access information and communication technologies.
- e) Commodities
- To establish a special programme to promote the development of activities in the fields of processing, marketing, distribution and transportation (PMDT) of commodities.

Development co-operation issues

The development component is essential to an EPA. The concept of development employed is a trade-related one, in the sense that trade liberalisation entails for ACP countries certain economic costs such as the fiscal impact and adjustment costs, and capacity requirements that need to be addressed. Unless these are addressed, the benefits of an EPA for the ACP would be unrealisable and the EU would be beneficiary of ACP trade liberalisation. The partnership must therefore serve to address these developmental needs specifically deriving from trade liberalisation, which are different from

f) Fisheries agreements

To ensure that fisheries agreements that are negotiated between the EU and interested individual ACP states contribute to the development of those countries and guarantee sustainable fishing activities in their waters. In this regard, any fisheries agreement concluded between the EU and an ACP state should include the following components:

- sustainability of fishery resources, especially the respect of biological pauses;
- environmental sustainability commitments;
- meaningful financial compensation;
- assistance to ACP states to develop their fishing industry as well as their processing/canning industry, and to export their fish products;
- establishment of joint ventures;
- transfer of technology, research and training; (vii) employment and training of ACP nationals on EU vessels;
- obligatory landing of part of the catches in the ACP state concerned.

The implementation of EPAs and reforms or adjustments to be made by ACP states in anticipation of the implementation of EPAs will entail additional costs for them. Since in many ACP states, import duties constitute an important source of government revenue, increased liberalisation of trade will imply loss of revenue. ACP states may therefore have to make fiscal adjustments which might not, however, make up totally for the loss in revenue from import duties, especially in countries where import duties are a major source of government revenue and where there are constraints to enlarging the tax base, especially through the introduction of or increase in VAT. Most ACP states already have a heavy debt burden, both external and domestic. As a result, they will not be able to find the necessary resources to finance those adjustments as well as their national development and social policies. Moreover, increased competition resulting from trade liberalisation may adversely affect ACP domestic industries, thereby leading to the closure of factories and loss of employment. There may be a need for ACP states to re-deploy labour and in this regard, re-training would be required. With a view to enabling ACP states to meet those adjustment costs so that EPAs can be implemented in a sustainable manner, there should be a

special package of measures in terms of, inter alia,:

- compensatory mechanisms to deal with the costs of adjustment.
- additional resources over and above those available under the EDF. These resources should be committed by the EU through a regular budgeting exercise rather than on a voluntary basis as is the case currently under the EDF.
- cancellation of all debts owed by ACP states to the EU and its Member States.
- adequate transitional and asymmetrical arrangements to allow ACP states to implement EPAs.
- an investment promotion package, including measures to promote the transfer of technology, know-how and skills, concessional funding for the private sector, and incentives for investment from EU Member States into ACP states.
- support to industrial innovation, research and technological development.
- financing for human resource development for sustainable development and industrial restructuring.

Legal issues

- To establish a fair, simple, transparent and cost-effective mechanism for dispute settlement between the ACP and the EU.
- To design a system that facilitates and promotes the use of arbitration and other alternative forms of dispute settlement to solve private trade disputes
- To create a binding legal framework within which the results of the negotiations at the all-ACP level with the EU can be incorporated.
- To secure a guaranteed legal status for EPAs.
- Ratification and entry into force of EPAs and revision clause.

Section IV: ACP negotiating structures

36. Since 1975, the ACP Group has negotiated four consecutive Lomé Conventions and the Cotonou Agreement. In these negotiations, the ACP Group used a structure that was based on its established institutional set-up, namely the Committee of Ambassadors and the ACP Council of Ministers as the negotiat-

ing organs and the ACP Secretariat as the technical and co-ordinating organ. Assistance was often sought from groups of ACP trade experts on specific technical aspects of those negotiations.

37. The ACP Ministerial Trade Committee (MTC) was constituted to, inter alia, monitor the preparatory and negotiation process of EPAs. The ACP MTC is part of the Joint ACP-EU Ministerial Trade Committee. The MTC should follow progress made in the negotiation process.

38. Since the EPA negotiations will mainly focus on trade and related economic issues common to all ACP countries and specific to ACP regions, Ministers of Trade and representatives of the Secretariats of the ACP regional economic integration organisations should be included in the structure for the negotiations. Selected Ministers should act as ACP spokespersons for the main negotiating groups. The close involvement of the Geneva-based ACP representatives in the negotiation process would also be required. These representatives, particularly their co-ordination mechanism, as in the recent past, will continue to fully support the preparatory process.

39. In the process of stepping up its preparations for the EPA negotiations, the ACP Group set up an Advisory Group of High-Level Trade Experts. This is a formidable technical resource that has considerably supported the preparatory process and should be counted on to support the negotiation process technically. Additional technical support should be sought from trade, economic and finance experts and non-state actors in ACP states and regions that have competences in the main areas of the negotiations. In addition, technical background will be sought from COMSEC, UNCTAD, regional development banks and Secretariats of regional integration groups.

40. The proposed structure is applicable to the first phase of the negotiations as per the provisions of para. 12 above.

41. The entire EPA negotiations are expected to take place over a period of five years. It is anticipated that the negotiations will be undertaken in several rounds of technical and political discussions. This will require the

negotiating teams from both sides (ACP and EU) to meet in accordance with the time line in Section V. On the ACP side, this will have significant cost implications. The choice to make the Committee of Ambassadors as the ACP negotiators for the first phase of the negotiations will alleviate a large part of the cost implications. However, the financial implications related to work of the technical groups and the Ministerial Spokespersons will remain an issue that the ACP Group will have to resolve.

42. In the light of the above, the following structure is proposed for the negotiations:

- a) **ACP council:** The ACP Council of Ministers will be the highest political monitoring organ, at least for the first phase of the negotiations. The ACP Council of Ministers will be responsible for the development and approval of negotiating positions and will review progress reports on the negotiations from the ACP MTC at least on a six-monthly basis and ultimately approve the outcome of the negotiations. At the joint level, this could be done by the ACP-EU Council of Ministers. The ACP Ministers of Trade and Finance will undertake comprehensive reviews of progress in the negotiations during their annual meetings. Since the heads of the ACP regional economic integration organisations regularly attend the meetings of the ACP Council, they will monitor the progress in the negotiating process.
- b) **Monitoring and review body:** The ACP Ministerial Trade Committee and the Joint ACP-EU Ministerial Trade Committee will monitor and review progress in the EPA negotiations. Since the heads of the ACP regional economic integration organisations regularly attend the meetings of the MTC, they will also monitor the progress in the negotiation process.
- c) **Ministerial spokespersons:** The ACP Council of Ministers will mandate selected Ministers of Trade as ACP spokespersons and alternates for the specific negotiating groups. The Ministerial spokespersons will be selected on the basis of criteria to be agreed by the ACP Group.
- d) **Negotiating groups:** These will be constituted based on the final categories of

the subjects to be finally agreed upon by both sides as part of the negotiations for the all ACP-EU Agreement. The negotiating groups will be constituted by members of the Brussels-based ACP Committee of Ambassadors supported by the Geneva-based ACP representatives whenever necessary. Memberships to the specific negotiating groups will essentially reflect balances agreed upon at the ACP level within the best interests of all states.

- e) **Technical groups:** Parallel technical groups will be constituted of experts in specific fields to support the work of the negotiating groups. The technical groups will be composed of the members of the Advisory Group of High-Level Trade Experts, selected experts in the various areas of negotiations, finance and economic matters, and experts representing regional integration organisations. The ACP Secretariat will co-ordinate the work of the technical groups.

- f) **Institutional co-ordination:** The ACP Secretariat will co-ordinate, under the authority of the ACP Council and the ACP Committee of Ambassadors, the entire technical work relating to the negotiation of the all ACP-EU agreement including in the preparations of technical documents, and supporting the negotiation process. Coordination mechanisms will be established between the Secretariats of the ACP Group and the regional economic integration organisations to ensure the effective involvement of the latter in the negotiations and to maintain coherence between the EPA negotiations and other economic and trade negotiations that might be taking place in parallel in various ACP regions.

Section V: time line for EPA negotiations

43. The following time line is being proposed for the EPA negotiations. It is, however, to be noted that it may have to be adapted in the light of future developments.

Dates	Negotiation Action	Review
June-Sept. 2002	<ul style="list-style-type: none"> ▪ Establishing Negotiating Groups ▪ Appointment of Ambassadorial and Ministerial spokespersons 	
Sept. 2002	<ul style="list-style-type: none"> ▪ Formal launch of the negotiations 	<ul style="list-style-type: none"> ▪ Meeting of ACP MTC ▪ Meeting of Joint MTC ▪ Special session of ACP Council of Ministers
Oct. 2002 - March 2003	<ul style="list-style-type: none"> ▪ Development of negotiation documents and positions 	<ul style="list-style-type: none"> ▪ ACP & Joint MTC to review progress
March – June 2003	<ul style="list-style-type: none"> ▪ Negotiations at Ambassadorial technical level – Phase I issues 	
June-July 2003	<ul style="list-style-type: none"> ▪ ACP-EU Ministerial round of negotiations – Phase I issues 	<ul style="list-style-type: none"> ▪ ACP Council of Ministers to review progress ▪ ACP & Joint MTC to review progress
Sept-Dec. 2003	<ul style="list-style-type: none"> ▪ Development of legal texts for the all ACP-EU Agreement ▪ Ambassadorial technical level preparations for approach to subsequent negotiations. ▪ Start of Phase II of EPA negotiations 	<ul style="list-style-type: none"> ▪ ACP Ministers of Trade and Economic Affairs/Finance to review progress
2004		<ul style="list-style-type: none"> ▪ The EU will assess ACP-EU consultations on the situation of non-LDCs which are not in a position to enter into EPAs.
2003 – 2007	<ul style="list-style-type: none"> ▪ Phase II of EPA Negotiations. 	
2006		<ul style="list-style-type: none"> ▪ Formal ACP-EU review.
2007	<ul style="list-style-type: none"> ▪ Drafting of legal texts and conclusion of the agreements. 	<ul style="list-style-type: none"> ▪ ACP-EU Council to formally conclude negotiations.

ANNEX II

RECOMMENDATION FOR A COUNCIL DECISION AUTHORISING THE COMMISSION TO NEGOTIATE ECONOMIC PARTNERSHIP AGREEMENTS WITH THE ACP COUNTRIES AND REGIONS

EXPLANATORY MEMORANDUM¹

1. Introduction

In the framework of the ACP-EU Partnership Agreement, signed in Cotonou on 23 June 2000 ("Cotonou Agreement"), the Parties agreed to conclude new WTO-compatible trading arrangements, progressively removing barriers to trade between them and enhancing co-operation in all areas relevant to trade². To this end, Economic Partnership Agreements (hereafter referred to as "EPAs") will be negotiated. Formal negotiations of EPAs will start in September 2002³.

In accordance with the provisions of Article 37 (5) of the Cotonou Agreement, "negotiations of Economic Partnership Agreements will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group, taking into account the regional integration *process within the ACP*". At the first Joint ACP-EC Ministerial Trade Committee, which met in Brussels on 14 May 2001, the ACP countries committed themselves to inform the Commission on the geographical configuration of future EPAs by November/December 2001. At the second Joint ACP-EC Ministerial Trade Committee, which met in Nairobi on 2nd October 2001, the ACP countries informed the Community that this decision may be further delayed, without questioning, however, the agreed date for the start of the negotiations.

The Commission holds the view that it is not necessary to wait for this decision, in order

to proceed with the deliberations on the negotiating directives for EPAs. Although EPAs will, as a matter of principle, be established with groupings engaged in a regional integration process and, possibly, with individual ACP countries, rather than with the ACP Group of States as a whole, it remains a major objective of ACP-EC co-operation to maintain the solidarity and the unity of the ACP Group of States. The Community has therefore always considered EPAs as a dynamic process, whereby existing EPAs should be extended and merged in accordance with the progress in regional integration within the ACP. In particular, in Africa, the Community has always supported the objective of an African Union, founded on the building-blocks of sub-regional integration. The Community is also supportive of African initiatives such as the recent New Partnership for African Development (NEPAD) that make a contribution to this end. EPAs should therefore not lead to a division between existing regional integration initiatives, but instead facilitate the achievement of the wider integration objectives. Different EPAs should therefore be as similar as possible, while taking account of the specificities of the countries and regions concerned. The Commission believes that one single set of negotiating directives best serves this objective.

The Commission will, however, inform the Council of the decision by the ACP countries on the geographical configuration of future EPAs, as soon as this decision is available, together with its view on the choices made and actions it intends to take to support them.

2. The foundations

The Cotonou Agreement is a comprehensive Partnership Agreement between the ACP States and the EU. It builds on three interlinked pillars: the political dimension, economic and trade co-operation and development finance co-operation. EPAs are defined by the Cotonou Agreement as the major instrument of eco-

¹ Explanatory Memorandum on ACP-EU Partnership Agreements, European Commission, Brussels, June 2002 (to be found at: http://trade-info.cec.eu.int/civil_soc/documents/meeting/me-68-27.6%20explanatory%20memorandum%20on%20ACP-EC%20negotiations1.doc)

² Article 36 (1) of the Cotonou Agreement

³ Article 37 (1) of the Cotonou Agreement

conomic and trade co-operation. However, while the political dimension as well as the development finance co-operation and even the objectives and principles applicable to EPAs have been defined in detail by the Cotonou Agreement itself, the actual negotiations of EPAs have been postponed and a longer period for the negotiations of EPAs has been provided for to allow the ACP countries to prepare themselves adequately for the new trading arrangements. Despite their independent legal standing EPAs thus remain an integral part of the Cotonou approach. They are therefore subject to the objectives of the Cotonou Agreement and must contribute to the achievement of these objectives.

2.1. The political dimension

The primary objective of the Cotonou Agreement is *“to promote and expedite the economic, cultural and social development of the ACP States, with a view to contributing to peace and security and to promoting a stable and democratic environment”*⁴. The respect of human rights, democratic principles and the rule of law constitute essential elements of the Partnership Agreement. Good governance constitutes a fundamental element of this Agreement⁵. EPAs need to be placed in this context.

2.2. The development dimension of EPAs

The Partnership established by the Cotonou Agreement is *“centred on the objective of reducing and eventually eradicating poverty, consistent with sustainable development and the gradual integration of ACP countries into the world economy”*⁶. EPAs must serve this objective. They are therefore above all an instrument for development.

This is underlined by the provisions of Article 34 (1) of the Cotonou Agreement, which states: *“Economic and trade co-operation shall aim at fostering the smooth and gradual integration of ACP States into the world economy, with due regard to their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries”*.

EPAs are designed for that purpose: by establishing a stable, predictable and transparent framework for economic and trade relations between the ACP countries and the EU, EPAs

are intended to mobilise economic operators at local, national, regional and international levels and to promote local economic activity and attract regional and international investments. By removing border measures to trade between the parties as well as other factors causing market segmentation, they will enlarge the markets of ACP countries, which will allow for economies of scale, will improve the level of specialisation, will increase competitiveness of the ACP States and will help attract investment. This, in turn, will lead to an increase in trade flows in the region, with the Community and with the rest of the world, thereby promoting the sustainable economic and social development of the ACP countries.

However, EPAs will also require difficult economic and social adjustments. In order to maximise the benefits of EPAs, it is therefore essential that EPA negotiations and implementation be accompanied by appropriate flanking policies of the ACP and that appropriate EU support measures are included in regular EDF financing. EPAs will set a trade policy framework which will need to be complemented by development policies in areas such as regional integration, macroeconomic and social policies, environmental policies, good governance (e.g. administrative and legal reforms), supply-side measures (e.g. private sector support, infrastructure development), sectoral programmes (e.g. agriculture, education, health), fiscal reforms and assistance in trade-related areas such as customs administration, investment, competition policies and standards. Article 18 of the Cotonou Agreement underlines this need by stating: *“The co-operation strategies shall be based on development strategies and economic and trade co-operation which are interlinked and complementary. The Parties shall ensure that the efforts undertaken in both aforementioned areas are mutually reinforcing”*.

EPAs will ultimately complete the comprehensive approach designed by the Cotonou Agreement, setting in force a powerful combination of political, trade and development co-operation to promote the sustainable development of the ACP countries and to contribute to poverty eradication in these countries.

3. The content of EPAs

In accordance with the provisions of Article 36 (1) of the Cotonou Agreement, EPAs shall be directed at *“removing progressively barriers to trade between the Parties and at enhancing co-operation in all areas relevant to trade”*. They

⁴ Article 1 (1) of the Cotonou Agreement

⁵ Article 9 of the Cotonou Agreement

⁶ Article 1 (2) of the Cotonou Agreement

therefore aim ultimately at fostering economic integration between the Parties.

The primary building block for EPAs is the establishment of free trade areas, progressively eliminating tariffs and non-tariff barriers, such as quotas and measures having equivalent effect, on substantially all trade between the parties.

In this context and in order to increase economic efficiency, EPAs should also aim at simplifying the requirements and procedures related to imports and exports, based on the highest international standards. Notably, EPAs should aim at identifying constraints and introducing improvements in import licensing, customs valuation, pre-shipment inspection, transit rules and other issues with a view to ensuring the transparent and harmonised application of these instruments.

EPAs should not only extend to trade in goods, but also to trade in services. Indeed, the importance of trade in services in world trade is increasing and there are examples of sectors where ACP countries have a comparative advantage. Services are therefore a potential source of growth for the ACP. In addition, the service sector is becoming an increasingly important input for trade in goods and therefore, a key determinant for the competitiveness of the ACP. Liberalisation of services will act as a spur to domestic reform, encouraging more efficient, varied and competitive markets at home and so significantly contribute to increasing the competitiveness of the ACP⁷.

The mere removal of tariffs will not be sufficient to fully achieve the objectives of economic and trade co-operation. In particular, the potential gains from trade liberalisation will not be fully realised unless other factors causing segmentation of markets are removed. This is precisely why the Cotonou Agreement has defined enhanced co-operation in all areas relevant to trade as the second pillar of EPAs. Co-operation in these areas should be as comprehensive and as extensive as possible and address all issues that may have a bearing on the achievement of the objectives of EPAs. Most of these areas as well as, in certain cases, the results to be achieved, have already been defined by the Cotonou Agreement itself⁸.

However, this should not prevent the Parties from extending co-operation in trade-related areas beyond these definitions, if this maximises the benefits of EPAs.

4. Guiding principles for the establishment of EPAs

The Cotonou Agreement has itself defined several guiding principles for the negotiation of EPAs. Other principles derive from the development dimension of EPAs.

4.1. EPAs as a tool for development

EPAs are designed to promote the sustainable development of the ACP countries and to promote the eradication of poverty in these countries and not primarily to achieve WTO compatibility of ACP EC trade relations. Therefore, while WTO rules need to be safeguarded, negotiations of EPAs must also take account of the level of development of the parties, the particular economic, social and environmental constraints the ACP countries are facing and their capacity to adapt and to adjust their economies to the new trading arrangements.

This is already required by Article 37 (7) of the Cotonou Agreement which provides that *"on the Community side, trade liberalisation shall build on the acquis and shall aim at improving current market access"*. However, with regard to ACP countries, *"negotiations shall take account of the level of development and the socio-economic impact of trade measures on ACP countries, and their capacity to adapt and to adjust their economies to the liberalisation process"*. As a consequence, *"negotiations will therefore be as flexible as possible in establishing the duration of a sufficient transitional period, in the final product coverage, taking into account sensitive sectors, and the degree of asymmetry in terms of the timetable for tariff dismantling, while remaining in conformity with WTO rules"*.

The Commission therefore believes that the Community should further improve current access to its market for products originating in the ACP countries. Indeed, 93 % by value of ACP exports to the Community enter already the Community market duty and quota free. In addition, 40 out of the 77 ACP countries enjoy already duty and quota free access for all products on the basis of the recent initiative in favour of the LDCs ("Everything but Arms").

The Commission considers that trade liberalisation in favour of developing countries

⁷ As regards audiovisual services, the negotiations will be conducted with a view to ensure that the Community and its Member States maintain the possibility to preserve and develop their capacity to define and implement their cultural and audiovisual policies for the purpose of preserving their cultural diversity.

⁸ Articles 41 to 51 of the Cotonou Agreement

should be part of a new North-South partnership according to which these countries apply the appropriate policies. In that respect, further opening of the EU market will be closely related to progress made in regional integration, as a tool for improving the internal policies. Further improved market access for the benefit of non-LDC ACP countries will contribute to maintaining the unity and solidarity of the ACP and to consolidating regional integration within the ACP; it will offer new opportunities to non-LDC ACP countries, with a view to promoting the diversification of their economies.

As far as the ACP countries are concerned, trade liberalisation vis-à-vis the Community should be undertaken with the maximum degree of flexibility available. Therefore, while a period of 10 years for tariff dismantling would be the normal rule, the Community should be prepared to accept that this period will be exceeded, where this is required by economic and social constraints of the countries concerned. Appropriate flexibility should also be applied in relation to product coverage and the calendar/rhythm of liberalisation commitments by the EPA partners. "Backloading" of implementation commitments and any product exclusions from liberalisation should reflect the specific constraints and sensitivities of the partner countries concerned.

With regard to trade in services, a similar degree of flexibility should be applied *"in accordance with the provisions of GATS and particularly those relating to the participation of developing countries in liberalisation agreements"*⁹. The Community should also be prepared to further postpone the start of negotiations in this area, where this is effectively required by specific constraints which the ACP countries concerned are facing. The Commission therefore considers it essential, however in cases where the start of reciprocal trade liberalisation is postponed, to provide for an appropriate monitoring mechanism to assess regularly the progress made. Furthermore, it should be ensured that during this additional preparatory period, appropriate development support is provided in the framework of the national and/or regional indicative programmes.

Finally, the Commission holds the view that similar approach should be followed with regard to co-operation in trade-related areas. Therefore, subject to the commitments already undertaken in the framework of the Cotonou Agreement, it may be appropriate, in specific

areas, to agree primarily on the ultimate results to be achieved, while applying a high degree of flexibility in the definition of the process leading to these results. In these cases the Commission considers equally essential to provide for the establishment of the appropriate institutions, which will monitor the process, and to ensure that adequate development support is given in the framework of the national or regional programmes.

The Commission believes that this highly flexible approach which takes into account the economic and social constraints of the ACP countries as well as their adjustment capacity is key to the achievement of the Cotonou objectives. It will be equally essential that this approach be complemented by appropriate development strategies in ACP countries and development support by the Community.

4.2. WTO compatibility

EPAs must be compatible with the provisions of the WTO. This is a basic prerequisite of EPAs themselves, without which the objectives of economic and trade co-operation of the Cotonou Agreement cannot be achieved. It is therefore also explicitly underlined by all relevant provisions of the Cotonou Agreement. For instance, Article 34 (4): *"economic and trade co-operation shall be implemented in full conformity with the provisions of WTO"* or Article 36 (1): *"the Parties agree to conclude new WTO compatible trading arrangements"*.

Liberalisation of trade in goods must therefore be undertaken, in particular, in conformity with the provisions of Article XXIV of the GATT 1994 while making appropriate use of the flexibility available within the framework of that provision¹⁰. Liberalisation of trade in services must be undertaken *"in accordance with the provisions of GATS and particularly those relating to the participation of developing countries in liberalisation agreements"*¹¹. The results of the negotiations on WTO provisions applying to regional trade agreements, which form part of the WTO Doha Development Agenda, will need to be taken fully into account.

Similarly, in all trade-related areas, EPAs must build on the acquis of the relevant multilateral trade rules and can only be developed in accordance with these rules.

⁹ Article 41 (4) of the Cotonou Agreement

¹⁰ Articles 37 (7 and 8) of the Cotonou Agreement

¹¹ Article 41 (4) of the Cotonou Agreement

As a general rule, including in those areas that are not yet covered by multilateral trade rules but are subject of multilateral trade negotiations under the Doha Development Agenda, negotiations of EPAs shall take account of these negotiations, so as to ensure full coherence with future multilateral rules.

In a wider sense the strengthening of capacities in the context of EPA negotiations will also enhance the ability of the ACP countries to participate actively in WTO negotiations and to implement their WTO commitments.

4.3. Regional integration

Fostering regional integration is one of the major objectives of ACP-EU Partnership. Indeed, in accordance with Article 1 (4) of the Cotonou Agreement, *“regional and subregional integration processes which foster the integration of the ACP countries into the world economy in terms of trade and private investment shall be supported and encouraged”*. Furthermore, Art. 2 of the Cotonou Agreement defines regionalisation as one of the fundamental principles of ACP-EC co-operation.

Accordingly, Article 35 (2) of the Cotonou Agreement states that *“economic and trade co-operation shall build on regional integration initiatives of ACP States, bearing in mind that regional integration is a key instrument for the integration of ACP countries into the world economy”*. In addition, Article 37 (5) of the Cotonou Agreement provides that *“negotiations of economic partnership agreements will be undertaken ... taking into account the regional integration process within the ACP”*.

In effect, the drive for economic growth cannot be strictly based on the domestic market and savings given the size of national markets and the limited per capita income. Recent progress in regional integration clearly indicates that the ACP have independently chosen to base their integration into the world economy on the intermediate step of regional economic integration. The growth generated by the establishment of adequate national policies is much stronger if similar measures are simultaneously taken by neighbouring countries. In this way, regional economic integration contributes to a greater convergence, to better export opportunities, to regional economic stability and has a knock-on effect on growth (by access to larger markets and by economies of scale), which is an important factor for poverty reduction. Moreover, greater access to regional mar-

kets increases the potential to attract investment, including FDI.

EPA negotiations should therefore build on the acquis of regional integration in order to maximise the benefits of EPAs. They should further contribute to consolidating and deepening the regional integration process, while taking account of the different levels of development of the ACP countries concerned as well as of the different intensity of integration that may exist within the region. The ACP countries should therefore undertake at least to automatically extend the treatment granted to the Community to all other ACP members of the EPA concerned preferably ahead of trade liberalisation vis-à-vis the Community.

4.4. Differentiation

In accordance with Article 2 of the Cotonou Agreement, differentiation constitutes one of the fundamental principles of ACP-EC co-operation. In addition, Article 35 (3) of the Cotonou Agreement confirms that *“economic and trade co-operation shall take account of the different needs and levels of development of ACP countries and regions, having particular regard to the specific situation of the least developed countries”*.

It has sometimes been understood that the principle of differentiation implies that reciprocity would not be required from least developed countries (LDCs), participating in an EPA. This is, of course, not the case. Reciprocity is one of the basic elements of EPAs from which no partner wishing to participate can be excepted without depriving EPAs of their essence.

In reality, the principle of differentiation calls more generally for special treatment for the LDCs and therefore opens the way to negotiate EPAs taking account of the particular constraints and adaptation capacity of the LDC Members. It therefore allows, for instance, for the negotiation of agreements which fix the objective of creating an EPA, establish common or harmonised rules and disciplines in all areas relevant for trade, and define plans and schedules for reciprocal tariff dismantling, while providing for a delayed start or a slower pace of tariff dismantling by the LDCs. Such adjustments would need to be compatible with the WTO-rules, in particular Article XXIV of GATT, that prevail at the time.

To what extent, and in what way, such variable speed should be applied within any given regional grouping will depend on the progress and the intensity of integration in this

grouping, as well as on the impact of differentiation on the cohesion of this grouping. This can, therefore, only be decided on a case by case basis. However, it is clear that the principle of differentiation should lead to the negotiation of EPAs which take into consideration any variable speed which exists within the regional ACP groupings.

5. Conclusions

EPAs are designed by the Cotonou Agreement to be a major instrument to establish “a true, strengthened and strategic partnership”¹² between ACP States and the EU. Their primary objective is to foster “the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries”¹³. EPAs are thereby above all an instrument for development. They are at the same time a major contribution to the achievement of the primary objective of the Cotonou Agreement “to promote and expedite the economic, cultural and social development of the ACP States, with a view to contributing to peace and security and to promote a stable and democratic political environment”¹⁴.

EPAs can only play this role if appropriate account is taken of the particular economic and social constraints of the ACP countries as well as of their adaptation capacity, of whether they are effectively combined with appropriate development strategies, and of whether they are fully integrated into the overall ACP-EU co-operation. This implies, in particular, that EPAs are established in full conformity with the objectives and principles of development co-operation, while being compatible with the provisions of the WTO. It also implies the need for a comprehensive approach within ACP-EU co-operation and for all measures undertaken within this framework to be mutually supportive. The negotiating directives presented by the Commission aim at achieving this objective.

In aiming at establishing a “true, strengthened and strategic partnership” between the ACP States and the EU, EPAs are also part of a long term process. The negotiation of EPAs will only be the first step in this process.

The second step will be the implementation of EPAs. EPAs will introduce a new dimension in ACP-EC economic and trade co-operation. They will require adjustments of the ACP States’ economies and will require appropriate flanking policies. EPAs should provide for an appropriate mechanism, compatible with WTO provisions, to ensure that the negotiated implementation timetable for trade liberalisation commitments by ACP countries can be modulated by agreement, where this is justified in the light of economic conditions in the ACP country concerned. Furthermore, the ACP States and the Community must ensure that the appropriate development strategies are in place to facilitate the necessary economic and social and environmental adjustment as well as the required flanking policies, promoting thereby the sustainable development in the ACP States. In order to better fulfil these objectives, the Community will initiate sustainability impact assessments prior to the start of negotiations. These assessments will aim at bringing a better understanding of trade, development and environment linkages and identifying the best policy mix.

However, the stages of negotiating, and subsequently implementing, EPAs will not mark the end of the ACP-EU economic partnership. This is not static but should constantly be adapted to respond to the challenges and opportunities of globalisation, to follow the progress of regional ACP integration and to take into account evolution of international and multilateral rules. EPAs must be prepared for such developments. They should therefore provide the appropriate rules to allow for their adaptation, and in particular to extend and to merge existing EPAs in line with progress in regional integration within the ACP.

In the light of the above, the Commission recommends:

- that the Council authorise the Commission to negotiate Economic Partnership Agreements with ACP countries and regions;
- that since in accordance with the Treaty, the Commission will conduct these negotiations on behalf of the European Community, the Council appoint a special committee to assist it in this task; and
- that the Council issue the appended negotiating directives.

¹² Article 35 (1) of the Cotonou Agreement

¹³ Article 34 (1) of the Cotonou Agreement

¹⁴ Article 1 (1) of the Cotonou Agreement

ANNEX I.I: Directives for the negotiations of Economic Partnership Agreements with ACP countries and regions¹⁵

1. Preamble

Apart from the general reference to the Cotonou Agreement, special reference will be made, *inter alia*, to the following:

- The commitment of the parties to promote and expedite the economic, cultural and social development of the ACP States, with a view to contributing to peace and security and to promoting a stable and democratic political environment;
- The commitment of the parties to the respect for human rights, including core labour rights, democratic principles and the rule of law, which constitute the essential elements of the ACP-EC Partnership and to good governance, which constitutes a fundamental element of the ACP-EC Partnership;
- The commitment of the parties to centre their partnership on the objective of reducing and eventually eradicating, poverty consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy; to build, therefore, ACP-EC economic and trade co-operation on regional integration initiatives existing within the ACP countries;
- The objective of ACP-EC economic and trade co-operation to foster the smooth and gradual integration of ACP States into the world economy, with due regard for their political choices and development priorities, and in particular their own poverty reduction strategies (notably PRSPs) thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries;
- The commitment of the parties to support the regional integration process within the ACP Group of States and to foster regional integration as a key instrument for the integration of ACP countries into the world economy;
- The commitment of the parties to strengthen economic and trade co-operation and to create a new trading dynamic between them with a view to facilitating the transition of the ACP countries to a liberalised global economy;
- The commitment of the parties to take account of the different needs and levels of development of the ACP countries and regions;
- The commitment of the parties to respect their obligations assumed within the framework of the World Trade Organisation and to further the objectives of the WTO;
- The joint objective of the parties to enhance co-operation in all areas relevant to trade and to achieve progressive and reciprocal liberalisation of trade in goods and services, in accordance with WTO rules, taking into account the level of development of the ACP countries and the economic, social and environmental constraints they are facing;
- The commitments of the parties to ensure that efforts undertaken in the framework of the Cotonou Agreement and those undertaken in the framework of EPAs are mutually reinforcing.

2. Nature and scope of the agreements

EPAs shall aim at fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries.

Pursuant to the provisions of Article 36 (1) of the Cotonou Agreement, negotiations shall aim at establishing Economic Partnership Agreements ("EPAs") with ACP sub-groups defined in accordance with the provisions of Article 37 (5) of the Cotonou Agreement, taking into account the regional integration process within the ACP.

EPAs shall be directed at fostering closer economic integration between the parties, by removing progressively barriers to trade between them and enhancing co-operation in all areas relevant to trade, in full conformity with the provisions of the WTO. EPAs shall

¹⁵ Draft recommendation authorizing the Commission to negotiate Economic Partnership Agreements with the ACP countries and regions, dated 17. June 2002.

be consistent with the objectives and principles of the Cotonou Agreement, and in particular with the provisions of Part III, Title II thereof. Negotiations of EPAs shall therefore notably take account of the different levels of development of the parties as well as of the particular economic, social and environmental constraints of the ACP countries and of the capacity to adapt and to adjust their economies to the liberalisation process.

3. Trade in goods

3.1. Objective

EPAs shall be directed at establishing free trade areas between the parties, based on the development objectives of the Cotonou Agreement and in conformity with the provisions of the WTO. It is understood, therefore, that the following market access conditions would be available only in the context of these EPAs.

3.2. Import duties

Imports into the Community

EPAs shall build upon and further enhance the market access conditions currently provided under the Cotonou Agreement. The specific arrangements for further tariff dismantling shall be fixed in the course of the negotiations, taking account of the existing and potential export interests of the ACP countries and of the impact of trade liberalisation measures in particular on regional integration within the ACP. The sugar protocol will be reviewed in this context.

Imports into the ACP countries

With the overriding objective of promoting development through regional economic integration and adequate policies, negotiations will pursue (1) the elimination of customs duties on imports from the EC for substantially all trade over the course of a transitional period, and (2) the abolishing of all charges having equivalent effect to customs duties upon entry into force of EPAs.

The timetable for tariff dismantling and the final product coverage of trade liberalisation by the ACP countries will reflect the economic, social and environmental constraints they are facing as well as their capacity to adapt their economies to the liberalisation process. Therefore, a transitional period, compatible with the objectives of the Cotonou

Agreement and WTO rules, will be applied in a flexible way, to take into account specific constraints of the ACP countries concerned. The same flexibility will be applied in relation to product coverage and the calendar/rhythm of liberalisation commitments by the ACP countries. In this context, the parties will examine, on a case-by-case basis, the potential impact of export refund mechanisms on the process of trade liberalisation.

Notwithstanding the above, ACP countries shall grant to the Community at any time treatment no less favourable than MFN treatment. This does not apply with respect to concessions made between ACP countries or by ACP countries to other developing countries in the framework of regional agreements or other trade provisions compatible with WTO requirements.

During the negotiations, and in the light of Article 299(2) of the Treaty and the agreements reached in the framework of the Cotonou Agreement, account will be taken of the specific interests of the Community's outermost regions. In this context, EPAs may in particular provide for specific measures in favour of products from these regions, aimed at their integration into intra-regional trade in the short term, in accordance with the provision of the WTO.

The ACP countries shall undertake, at least, to extend automatically the treatment granted to the Community to all other parties of the EPA concerned, preferably ahead of trade liberalisation vis-à-vis the Community.

Where serious difficulties occur as a result of trade liberalisation, the ACP countries may, in consultation with the Community, temporarily suspend the application of the liberalisation schedule and, where necessary, re-modulate the rate of progress towards the ultimate establishment of the free trade area, in full conformity with the provisions of the WTO.

The trade liberalisation plans and schedule of the ACP countries shall be part of EPAs. It shall include the appropriate product lists as well as timetables for tariff dismantling. These lists and timetables will be finalised during the negotiations.

Basic duties

The basic duties to which the agreed reductions are to be applied shall be the MFN duties effectively applied by the ACP countries on the day of the signature of the EPAs. They shall be defined in a list attached to each EPA.

3.3. General provisions

- **Export duties.** Any export duties applied in trade between the parties shall be eliminated on an agreed timetable that will not exceed ten years.
- **Quantitative restrictions** and measures having equivalent effect applied to exports or imports in trade between the parties shall be abolished on entry into force of EPAs.
- **National treatment and fiscal measures.** A standard national treatment provision, ensuring parties' products receive treatment no less favourable than that accorded to like products of national origin, will be included in the EPAs. Any discriminatory internal fiscal measures or practices already in existence will be eliminated from the entry into force of EPAs.
- **Tax carve out clause.** EPAs will include a tax carve out clause in accordance with Article 52 of the Cotonou Agreement.
- **Variable speed.** Where compatible with the integration objectives of the ACP regions concerned, EPAs shall provide for variable speed in trade liberalisation, taking into account the level of development of the ACP countries concerned as well as of the different intensities of integration that may exist within the region, in line with the region's internal integration process.
- **Food security clause.** The Agreement shall include provisions aimed at fostering food security in accordance with WTO rules.
- **Safeguards.** Safeguard provisions as defined in Article 8 of Annex V to the Cotonou Agreement shall apply *mutatis mutandis*, in accordance with the relevant provisions of the WTO.
- **Antidumping.** If one of the parties finds that injurious dumping or subsidisation is taking place in trade by the other party within the meaning of the provisions of GATT, it may take appropriate measures against this practice, in accordance with the GATT/WTO rules and practices. In this context, the Community shall have special regard to the particular economic and social situation of the ACP countries concerned.
- **Stand still.** The parties will agree that no new duties will be introduced nor existing duties be increased and that no new quantitative restrictions nor measures having equivalent effect will be introduced by either party after the beginning of the negotiations between the regional grouping and the EC.
- **Transparency.** Both sides will be required to communicate to each other its customs tariff and any subsequent amendments made to it.
- **Exceptions clause.** The Agreement will include a standard exceptions clause allowing measures to be taken on grounds of protection of public order, human, animal or plant life or health, conservation of exhaustible natural resources etc, provided that such measures are applied in conformity with WTO rules.
- **Classification of goods.** The Harmonised System shall be applied to the classification of goods in trade between the Parties.

3.4. Rules of origin, administrative cooperation and financial responsibility

Negotiations shall be based on the rules of origin and methods of administrative cooperation as defined in Protocol No 1 of Annex V to the Cotonou Agreement. In this context the Community shall assess any specific request for changes to the rules of origin, presented by the ACP, aimed at improving current market access for the ACP.

The Agreement will empower the Contracting Parties to take appropriate measures in the event of lack of administrative cooperation or management. With respect to the issue of losses of customs duties linked to the management of preferential imports appropriate measures could be identified on the basis of a horizontal Council decision.

3.5. Trade facilitation

Negotiations shall aim at simplifying all requirements and procedures related to imports and exports, in particular with regard to customs processes, import licensing, customs valuation, transit rules and pre-shipment inspection, drawing on the highest international standards and in conformity with the provisions of the WTO, including those elaborated pursuant to the Doha Development Agenda.

4. Trade in services

4.1. Scope

The Agreement will provide for a progressive and reciprocal liberalisation of trade in services aiming at assuring a comparable level of market access opportunities, consistent with the relevant WTO rules, in particular Article V of the GATS, taking into account the level of development of the ACP countries concerned. Les Accords prévoient que les services audiovisuels feront l'objet d'un traitement distinct au sein d'accords spécifiques de coopération et de partenariat culturels entre les parties. Ces accords permettront de garantir la possibilité pour l'Union européenne et ses États membres ainsi que pour les ACP de préserver et développer leur capacité à définir et mettre en œuvre leurs politiques culturelles et audiovisuelles pour la préservation de leur diversité culturelle, tout en reconnaissant, préservant et promouvant les valeurs et identités culturelles des ACP, pour favoriser le dialogue interculturel par l'amélioration des possibilités d'accès au marché pour les biens et services culturels de ces pays, en conformité avec les dispositions de l'article 27 de l'Accord de Cotonou.

The parties will agree that no new or more discriminatory measures will be introduced by either party after the beginning of the negotiations between the regional grouping and the EC.

The liberalisation process will take place on an asymmetrical basis. The ACP countries will be allowed a certain measure of flexibility depending on their level of development in overall terms as well as in terms of sector and sub-sector in accordance with the provisions of the GATS, in particular those relating to developing countries' participation in the liberalisation agreements. For the Community, the transition period will not exceed 10 years. For the ACP side, a transitional period, compatible with the objectives of the Cotonou Agreement and WTO rules, will be applied in a flexible way, to take into account specific constraints of the ACP countries concerned.

ACP countries belonging to an EPA will undertake to apply at least the same arrangements between them as they apply to the Community.

The EPAs will reconfirm the commitments made under the terms of Article 42 of the Cotonou Agreement.

4.2. Practical arrangements

The negotiations will open early enough to be concluded by the end of the preparatory period, as laid down in Article 37(1) of the Cotonou Agreement. Where justified by particular economic, social and environmental constraints encountered by the ACP countries, the negotiations may be postponed. In such an event the parties will shall regularly assess the situation in the course of the EPA negotiations and will set the date for the start of the negotiations in this sector in 2006 at the latest. They will ensure that the preparatory phase to these negotiations is actively used to prepare for the negotiations, in particular by mobilising appropriate support for the development of services in line with the provisions of the Cotonou Agreement in particular Article 41(5) thereof.

5. Current payments and capital movements

EPAs will reconfirm the commitments undertaken in the framework of Article 12 of Annex II to the Cotonou Agreement. With a view to strengthening and developing financial markets, the parties shall seek to negotiate further opening of the capital market beyond direct investment, while respecting existing monetary agreements and while taking into account the need to develop an appropriate regulatory framework. The agreements will include a clause providing for the possible revision of this chapter to ensure coherence between obligations made within the framework of Economic Partnership Agreements and other relevant agreements, including commitments under the GATS.

6. Trade-related areas

6.1. General

EPAs will reconfirm the respective commitments undertaken in the framework of the Cotonou Agreement¹⁶, in particular with regard to competition policy, protection of intellectual property rights, standardisation and certification, sanitary and phytosanitary measures, trade and environment, trade and labour standards, consumer policy and protection of consumer health. These provisions will be reviewed in the light of the results of

¹⁶ Articles 45 to 51 and 78 of the Cotonou Agreement.

the forthcoming multilateral trade negotiations.

6.2. Specific areas

In addition, the following shall apply with regard to the following areas:

- **Investment.** In accordance with the objective of “reducing and eventually eradicating poverty consistent with the objective of sustainable development” (and with regard to articles 1, 29, 75 to 78, and to Annex II of the Cotonou Agreement) the parties agree to establish, while respecting the respective competencies of the Community and its Member States, a regulatory framework which shall enhance and stimulate mutually beneficial sustainable investment between them. This framework will be based on principles of non - discrimination, openness, transparency and stability and on general principles of protection, which will endorse the best results agreed in the competent international fora or bilaterally.
- **Public procurement.** EPAs will aim to ensure full transparency in procurement rules and methods at all government levels. In addition the parties will seek progressive liberalisation of their procurement markets on the basis of the principle of non discrimination and taking into account their development levels.
- **Standards, technical regulations and conformity assessments.** EPAs will confirm the objective of the Cotonou Agreement to negotiate, where appropriate, mutual recognition agreements in sectors of mutual interest.
- **Data protection.** EPAs will set the objective to work towards the elimination of obstacles to free movement of personal data between the parties, created by the lack of protection for personal data, via, inter alia, exchange of information and experts.

6.3. Implementation

The EPA Council (see below, point 8), assisted by a Joint Implementation Committee composed of senior technical experts, will monitor the implementation of these provisions. The Joint Implementation Committee will meet on a regular basis and at least once a year. It will draw up annual reports assess-

ing the progress made and formulating recommendations on measures for further achievements, including the provision of development co-operation in accordance with the provisions of the Cotonou Agreement.

7. Complementarity

EPAs and the development strategies of ACP partners (notably PRSPs) shall be mutually supportive. In particular, in order to facilitate the achievement of the objectives of EPAs the ACP parties will undertake to fully integrate EPAs within their development strategies and the EC to do likewise within its development co-operation strategies. They will undertake to allocate adequate resources for that purpose within the national and regional indicative programmes, in accordance with the relevant provisions of the Cotonou Agreement.

8. Institutional framework

A Joint EPA Council will be established for each EPA which will perform the following functions:

- ensure that the EPA operates properly;
- study the development of economic and trade co-operation between the parties;
- seek appropriate methods of preventing problems which might arise in areas covered by the EPA, in particular with regard to the achievement of the EPA's development objectives;
- exchange opinions and make recommendations on any issue of common interest relating to economic and trade co-operation, including future actions for the proper implementation of the EPA and, in particular, the need for development co-operation to be provided in accordance with the relevant provisions of the Cotonou Agreement.

The composition, frequency, agenda and venue of joint EPA Council meetings will be agreed on through consultation between the parties. The EPA Council will have the power to take decisions in respect of all matters covered by the EPA. It will report to the Council of Ministers established in accordance with the provisions of Article 15 of the Cotonou Agreement on matters of common concern to the entire ACP Group of States and the Community.

9. Final provisions

EPAs will include

- a clause on dispute settlement and a clause on non-execution, including provisions corresponding to Articles 96 and 97 of the Cotonou Agreement. Dispute settlement provisions on trade or trade related matters will not affect the parties' rights and obligations under WTO rules, in particular the Understanding on Rules and Procedures Governing the Settlement of Disputes;
- a clause on future developments providing that EPAs may be extended, in particular through accession, or merged, in accordance with the progress made in regional integration;
- a clause on their entry into force, the duration (unlimited), termination, notice required for denunciation and a territorial application clause.

For the purpose of EPAs, the parties on the ACP side shall mean the regional grouping or its Member States or the regional grouping and its Member States, in accordance with their respective spheres of competence. EPAs shall apply as well to measures taken by any state, regional or local authorities within the territories of the parties.

10. Structure and organisation of the negotiations

The negotiations will be formally opened in September 2002. Initial discussions will be at an all-ACP level, with a view to finding a common understanding on the basic structure and content of EPA. Negotiations on a regional level should start in January 2003 at the latest.

In accordance with the relevant provisions of the Cotonou Agreement, the period of negotiations will also be used for capacity building in the public and private sector of the ACP countries with a view to enhance their ability to define and implement appropriate regional and multilateral trade strategies and policies. This will include measures to enhance competitiveness, to strengthen regional organisations and to support regional trade integration initiatives, where appropriate with assistance to budgetary adjustment and fiscal reform, as well as to upgrade infrastructure, and to improve investment. These measures will be monitored by Regional Preparatory Task Forces, which will be

established jointly by the regional grouping engaged in EPA negotiations and the Community, at the beginning of the negotiations. The Regional Preparatory Task Forces will inter alia provide suggestions to be considered within the national and regional programming dialogue between the EC and the ACP countries.

The ACP countries and the Community will, in the context of the Joint Ministerial Trade Committee established under Article 38 of the Cotonou Agreement, regularly review the progress made in the preparations and negotiations and will in 2006 carry out a formal and comprehensive review of the arrangements planned for all ACP countries. Negotiations should be concluded in 2007, at the latest.

Appropriate mechanisms will be established to ensure that Non-state actors in the EU and in the ACP countries will be informed and consulted on the content of negotiations and that co-ordination with ongoing ACP-EU dialogues is ensured.