

11 July 2005

Original: ENGLISH

ENGLISH AND
FRENCH ONLY

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**DEVELOPMENTS AND ISSUES IN THE NEGOTIATIONS ON ECONOMIC
PARTNERSHIP AGREEMENTS BETWEEN AFRICAN ACP STATES AND THE EU**

**Note by the UNCTAD secretariat, prepared for the African Union Conference of
Ministers of Trade: Third Ordinary Session, Cairo, Egypt, 5-9 June 2005**

CONTENTS

A.	EPAs in the ACP-EU Cotonou Partnership Agreement	2
B.	EPA negotiations: Phase I.....	3
C.	EPA negotiations: Phase II	6
D.	Ways forward.....	9

Executive summary

This note was prepared at the request of the African Union for the AU Conference of Ministers of Trade: Third Ordinary Session, 5-9 June 2005, Cairo, Egypt. It reviews developments in the ACP-EU negotiations on economic partnership agreements under the Cotonou Partnership Agreement as they relate to African ACP States and regions, and provides some broad suggestions on priorities ahead in concluding the negotiations.

A. EPAs in the ACP-EU Cotonou Partnership Agreement

1. The Partnership Agreement between the members of the African, Caribbean and Pacific (ACP) Group of States and the European Community and its Member States was signed on 23 June 2000 in Cotonou, Benin. The Cotonou Partnership Agreement (CPA) replaced the Fourth Lomé Convention, which expired on 29 February 2000 after being in existence for 10 years. The expiry of the Lomé Convention necessitated the negotiations for its successor; which were launched in September 1998 and concluded in February 2000 with the signing of the CPA.

2. The CPA provided a built-in agenda of negotiations between the ACP Group of States and the EU for new and permanent economic partnership agreements (EPAs) during the preparatory period until 31 December 2007, to take effect on 1 January 2008 (Articles 36 and 37). As an interim measure, it was agreed that the system of non-reciprocal preferences should continue during the preparatory period (Article 36). The WTO waivers necessary to cater for the non-reciprocal preferences were granted in November 2001 at the Fourth WTO Ministerial Conference in Doha, Qatar, which derogated the EU from its obligations under GATT Articles I:1 and XIII: 1 and 2.¹

3. The EPAs are to be comprehensive in scope, covering trade in goods (Articles 37 and 38), and are to cover the liberalization of services and the building of service supply capacity of ACP States in the areas of labour, business, distribution, finance, tourism, culture, and construction and related engineering services (Articles 41:4 and 5). Measures are to be taken to give inhabitants of ACP countries easy access to information and communication technologies (Article 43). The parties are also to promote the liberalization of maritime transport (Article 42). ACP–EU cooperation is also mandated in trade-related areas such as competition policy, protection of intellectual property rights, standardization and certification, sanitary and phytosanitary measures, trade and environment, and trade and labour standards (Articles 44–52). EPAs are to build upon the following agreed key principles: (1) WTO compatibility; (2) special and differential treatment (SDT), as well as flexibility for the ACP States; (3) preserving the “acquis” of the Lomé Conventions; and (4) preserving subregional and regional integration processes as the building blocks for ACP–EU trade relations.

4. The formal negotiations are to be undertaken by ACP States that consider themselves in a position to do so at a level they consider appropriate and in accordance with the procedures set by the ACP Group (Article 37:5). EPAs will aim at progressively removing barriers to trade between the concerned ACP States and the EU, i.e. at reciprocal free trade in line with relevant WTO provisions, namely on RTAs. However, the EPAs are also to be as flexible as possible in establishing the duration of a sufficient transitional period, the final product coverage, taking into account sensitive sectors, and the degree of asymmetry in the timetable for dismantling tariffs (Article 37:7). The EU and ACP States are committed to defending the “flexibility” aspects of the EPAs in the WTO (Article 37:8).

¹ WT/MIN(01)/15 and WT/MIN(01)/16, 14 November 2001.

5. It is possible that some ACP States may choose not to participate in EPAs. Thus, the CPA provided that in 2004 the EU would “assess the situation of the non-LDCs which, after consultations with the Community, decide that they are not in a position to enter into economic partnership agreements and will examine all alternative possibilities, in order to provide these countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules” (Article 37:6). The implementation of this provision has been postponed from 2004 to 2006 at the request of the ACP States.

6. As regards LDCs, the ACP States and the EU have agreed that they will “start by the year 2000, a process which by the end of the multilateral trade negotiations and at the latest 2005 will allow duty free access for essentially all products from all LDCs, building on the level of the existing trade provisions of the Fourth ACP–EC Convention” (Article 37:9). In addition, the new regime for LDCs will simplify and review the rules of origin, including the cumulation provisions that apply to LDC exports. The introduction by the EU of the “Everything but Arms (EBA)” initiative, which was tabled in September 2000 and entered into force in March 2001, has addressed this provision. EBA provides duty-free and quota-free treatment of all LDC exports, with the permanent exclusion of arms and munitions and the temporary exclusion of bananas, sugar and rice. For the latter products, tariffs are to be eliminated gradually between 1 January 2002 and 1 January 2006 for bananas, between 1 September 2006 and 1 September 2009 for rice, and between 1 July 2006 and 1 July 2009 for sugar. For rice and sugar, tariff rate quotas (TRQs) are to apply during the period.

7. EPA negotiations are taking place at the same time as the multilateral trade negotiations under the WTO Doha work programme. This will affect ACP States’ trade and development interests, as well as the prospects for subregional integration processes in the African ACP regions. The interaction between the EPA and WTO negotiations manifests itself through: (i) WTO rules applying to regional trade agreements (RTAs), which determine the terms of EPAs; (ii) market access commitments in agriculture, non-agricultural products and services, which determine the scope of preferences available under EPAs; and (iii) new trade-related issues, which may determine the scope for “deep integration” under EPAs. Thus, it is important to approach both negotiations in a coherent manner so as to maximize development gains from the totality of subregional, interregional (EPA) and multilateral (WTO) negotiations.

B. EPA negotiations: Phase I

8. In respect of the EPA negotiations, the ACP States and the EU agreed on a two-phase approach. The first phase is to be undertaken at the all-ACP and EU level 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.

9. The formal negotiation on EPAs at the all-ACP level was launched on 27 September 2002. Discussions were held on principles and objectives, legal issues, market

access, agriculture and fisheries agreements, services, trade-related areas and the development dimension. Despite a call by the ACP States, no agreement was reached to conclude phase I with a formal all-ACP-EU framework agreement. A joint declaration and report were adopted on the progress of the all-ACP level discussion. The ACP States and the EU decided that the all-ACP negotiations would continue in parallel with phase II negotiations. The discussion that took place during the phase I negotiations can be summarized as dealing mainly with (1) principles and objectives, (2) WTO compatibility, (3) market access, (4) agriculture, (5) fisheries, (6) services, (7) trade-related issues, (8) development support, and (9) other issues, as summarized below.²

10. *Principles and objectives.* The overall objectives of EPAs are the sustainable development of ACP States, their smooth and gradual integration into the global economy, and eradication of poverty. Specifically, EPAs would aim to promote sustained growth; increase the production and supply capacity of the ACP States; and foster the structural transformation of the ACP economies and their diversification. Also, EPAs must support regional integration initiatives existing within the ACP and not undermine them. EPAs would maintain and improve the current level of preferential market access into the EC for ACP exports. Commodity protocols would be reviewed in accordance with CPA Article 36:4, particularly their compatibility with WTO rules, bearing in mind the special legal status of the Sugar Protocol.

Proposals by the ACP Group on SDT in WTO rules on regional trade agreements³

WTO negotiations on rules applicable to regional trade agreements are relevant to EPA negotiations, as WTO rules would affect the terms and conditions of EPAs. In the Negotiating Group on Rules, the ACP Group of States has submitted a proposal calling for explicit SDT and flexibilities to be integrated into GATT 1994 Article XXIV. This call was supported by the Africa Commission Report. Specifically, the ACP Group proposed that SDT for developing countries be formally and explicitly made available to developing countries in meeting criteria set out in paragraphs 5 to 8 of GATT Article XXIV in the context of RTAs entered into between developing and developed countries. Such requirements relate to “substantially all the trade”, a “reasonable period of time”, notification, reporting and review in the Committee on Regional Trade Agreements, and the applicability of dispute settlement proceedings. Recently, submissions were made by Australia and by the EC regarding, *inter alia*, the “substantially all the trade” requirement.⁴ Australia proposed that substantially all the trade be measured by a coverage of 95 per cent of HS 6-digit tariff lines at the end of the transitional period, including all products that account for at least 2 per cent of total intra-regional imports, and an initial coverage of 70 per cent at the entry into force of an RTA. The EC proposal called for a measurement based on trade volume, with the threshold level subject to negotiation. The EC is prepared to explore various ways of achieving this aim, including the extent to which flexibilities might be appropriate with respect to, *inter alia*, the length of the transitional period, the level of final coverage and the degree of asymmetry under GATT Article XXIV. Specifically, the EC is open to considering separate and differentiated, i.e. lower, thresholds for developing countries and least developed countries, as proposed in the submission by the ACP countries. Moreover, longer transition periods might be necessary to facilitate market building and consolidation through gradual openness to trade in weak and vulnerable developing countries, taking into account their specific needs and constraints.

² Joint Report on the all-ACP-EC phase of EPA negotiations (ACP/00/118/03 Rev.1; ACP-EC/NG/NP/43), Brussels, 2 October 2003.

³ TN/RL/W/155, 28 April 2004.

⁴ TN/RL/W/173/Rev.1, 3 March 2005, and TN/RL/W/179, 12 May 2005, respectively.

11. *WTO compatibility.* EPAs must be compatible with prevailing WTO rules and would need to take account of the evolutionary nature of relevant WTO rules in the context of the Doha negotiations. The ACP Group and the EU agreed to cooperate closely in the context of the WTO to defend the arrangements reached, in particular with regard to the degree of flexibility available (see box above). Special and differential treatment should be provided under EPAs to all ACP States, and in particular to LDCs and vulnerable small, landlocked and island countries.

12. *Market access.* The principles of flexibility, asymmetry, and preservation and improvement of the Cotonou acquis are to guide the market access negotiations. At the end of the EPA negotiations, no ACP State participating in an EPA should be worse off than it is currently. Flexibility and asymmetry in favour of the ACP countries are to be granted under EPAs in terms of both product coverage and transition periods. The application of the principle of asymmetry to rules of origin would be further examined. EPA product coverage and the length of transitional periods need to be defined at the regional level. Further discussion is warranted regarding the general WTO parameters in respect of transitional periods, as well as product coverage. Appropriate safeguard measures should be developed at the regional level for both industrial and agricultural products. A system of continuous evaluation should be built into the EPAs so as to assess impact and put in place adjustment measures to deal with negative effects.

13. *Agriculture.* Diversification of ACP States' export structure and increasing the value added of their exports is important. In this respect, it is essential to address processing, marketing, distribution and transport (PMDT) issues, in particular for LDCs, small island developing States (SIDS), landlocked countries, net food-importing developing countries (NFIDCs) and heavily indebted non-LDCs, small economies and single commodity producers. Related concerns such as rural development and the preservation of the environment also deserve attention. It is necessary to address SPS issues, as well as the impact of EC export refunds on a case-by-case basis. It is important to support the development of national and regional capacities, including testing and certification institutions. Commodity Protocols would be addressed, as provided for under Article 36(4) of the Cotonou Agreement. Divergence of views existed on the sequencing of trade liberalization for agriculture vis-à-vis the provision of support for the development of the agricultural sector to the ACP countries and regions. The ACP States consider that more assistance is needed for the ACP countries and regions before EPA negotiations can start in this area, while the EC has argued that these two processes are complementary and should proceed in parallel.

14. *Fisheries.* Continued discussion is required on the potential of negotiating a framework ACP-EU Agreement on fisheries incorporating fundamental principles of responsible fishing and rational and sustainable management of fisheries resources.

15. *Services.* While there is no firm obligation under the CPA to liberalize trade in services, parties have agreed on the objective of extending their partnership to encompass liberalization of services (Article 41(4)). Services liberalization should be progressive, in principle based on the positive list approach, and adapted to the level of development of

the ACP countries and regions concerned, both in overall terms and in terms of their services sectors and subsectors and their specific constraints, and should be underpinned by the principles of SDT, asymmetry and positive regional discrimination. A sound regulatory framework is important. Parties would retain the right to regulate, and to introduce new regulations on, the supply of services within their territories in order to meet national policy objectives. The negotiations are to address the special safeguard mechanism. Improvement in mode 4 (temporary movement of natural persons) will be discussed in the context of the EPA negotiations. While it is necessary to support the ACP countries for the development of their services sector, further discussion is needed as regards the sequencing between support for the development and strengthening of the services sector in the ACP countries and the negotiation of liberalization commitments.

16. *Trade-related issues.* A difference in views exists on the scope and coverage of the issues to be included in EPAs, as well as on the sequencing of EPA negotiations with WTO negotiations and the building of requisite capacity in ACP States. ACP States hold the view that trade-related rules should not be the subject of EPA negotiations before agreement is reached in the WTO and that there is a need to build adequate legal and institutional capacities in ACP States and regions prior to negotiations on any disciplines.

17. *Development support.* EPAs need to be accompanied by appropriate development support measures. Capacity building, infrastructure development, industrial development and enhancing regional integration are important. However, a divergence of view persists on whether there is a need for financial resources additional to the European Development Fund (EDF). ACP States called for additional resources to cater for adjustment costs arising from EPAs and to ensure that resources currently available under the EDF are not diverted from development priorities. The EU maintains that resources for development cooperation are not a subject of EPA negotiations, as the financing for development has been agreed in the CPA.

18. *Other issues.* There was no agreement on the adequacy of including a non-execution clause in EPAs, as provided in CPA Articles 96 and 97. The ACP Group maintained that the non-execution clause should not apply to EPAs and should be confined to political cooperation. As regards dispute settlement procedures, further examination is deemed necessary.

C. EPA negotiations: Phase II⁵

19. Phase II negotiations have been launched for all four African ACP regions and roadmaps of negotiations adopted. Phase II was launched for CEMAC and ECOWAS in October 2003, for Eastern and Southern Africa (ESA) in February 2004, and for SADC in July 2004. The second phase of the EPA negotiations poses significant challenges, and possible opportunities, for ACP States in designing EPAs as instruments of development and their fuller integration into the world economy. A particular challenge for ACP States

⁵ Comprehensive reporting on the status of EPA negotiations is provided in *Trade Negotiations Insights* available at: www.ictsd.org/tni and www.acp-eu-trade.org/tni.html

is to secure, in concrete, operational and mandatory terms, special and differential treatment (SDT) under EPAs, while ensuring their WTO-compatibility.

20. This challenge has become particularly important in light of the "Stop EPAs Campaign" launched in November 2004 by some non-governmental organizations. These civil society groups oppose EPAs in their current form, including the notion of reciprocity between ACP States and the EU and compatibility with existing WTO rules on RTAs.. Such concerns with regional trade liberalization are not specific only to the EU and ACP States, but are felt by the international trading community at large and would need to be addressed in providing global legitimacy and acceptance of trade agreements.

21. Some EU Member States have also called upon the EC to ensure that the development objectives of EPAs be explicitly realized. In March 2005, the United Kingdom Government issued a statement calling for EPAs to be designed to deliver long-term development, economic growth and poverty reduction in ACP countries, in line with the report of the Africa Commission sponsored by the Prime Minister of the United Kingdom, which called for the timing, pacing, sequencing and product coverage of market opening to be decided by ACP States themselves. The EU has indicated that there would be no unfair demands for reciprocity or forced liberalization until a targeted aid programme has built up local capacities and the needed economic development. However, it called for the inclusion in EPAs of some new issues, including investment, public procurement, trade facilitation and competition policy. The EU has maintained that the cost of implementing EPAs is impossible to quantify in advance of negotiations and that the question of financing could only be determined in concrete terms after the expiration of the 9th EDF. Regional integration and the implementation of EPAs would be at the core of the programming of the new EDF, which would start during the course of 2005.

22. *Central Africa.* The phase II negotiations were formally launched on 4 October 2003 between Central Africa (CEMAC and Sao Tome and Principe) and the EU. The roadmap for the negotiations was agreed on 16 July 2004 in Brussels. The roadmap outlined an indicative timetable and a work programme. Development issues, particularly the issue of the provision of funding additional to EDF, have proved to be difficult. The roadmap identified priorities for regional economic integration, the types of programmes needed to improve the competitiveness of Central African countries, and EC support in this regard. In accordance with the roadmap, a Regional Preparatory Task Force (RPTF) has been established. Meetings of the joint Senior Negotiators Committee and the Joint Ministerial Negotiating Meeting have been held. It has been agreed to launch several studies, including on the export potential of CEMAC, production capacity needs, and EPA impact on competitiveness. Four technical negotiating groups have been established on issues including customs union and trade facilitation, standardization and SPS, trade related issues and services, and investment.

23. *Eastern and Southern Africa (ESA).* ESA and the EU agreed to commence the phase II negotiations on 7 February 2004 in Mauritius and adopted a joint roadmap. The scope, priorities and sequencing of the negotiations have been agreed. Priority will be

given to a fishery framework agreement, regional market access (including SPS and rules of origin) and development issues (including supply-side constraints, short-term costs of adjustment, and the development of regional markets). With regard to development issues, negotiations will focus on identifying supply-side constraints and short-term costs of adjustment to support regional integration. Difficulties faced by ESA countries in the implementation of EDF will be discussed. There will be a focus on market access, including rules of origin, tariff peaks and escalation, and SPS.

24. The ESA Ministers' meeting held in December 2004 in Lusaka, Zambia, took stock of preparations for EPA negotiations. Two studies are to be prepared to assess the costs of implementing the EPA and proposed measures to address them. Dedicated discussion has taken place on some technical issues, including development, intellectual property rights, agriculture and SPS. An outline of the ESA offer to the EU is under preparation. Specific proposals to the EU would include the costs of implementing EPAs and the removal of supply-side constraints based on an analysis of the effects of EPA tariff reduction on revenue and the competitiveness of domestic industries.

25. *Southern African Development Community (SADC)*. SADC-EU negotiations were launched in Windhoek, Namibia, on 8 July 2004. A joint roadmap was adopted on the same occasion. SADC countries emphasized the importance of addressing trade-related issues, including the simplification of rules of origin. A formal Negotiating Meeting of SADC Ambassadors and Senior EC Officials was held in Brussels on 7 December 2004. The first technical meetings have been held on SPS and TBT. In the SADC-EU discussion, issues related to regional configuration have attracted attention. The Trade and Development Cooperation Agreement between South Africa and the EU (TDCA) may have implications for SADC-EC EPA negotiations, as some SADC members, being de facto members of the TDCA by virtue of their membership of SACU, are already engaged in reciprocal tariff elimination commitments entered into by South Africa under the TDCA. This might constitute the basis for the SADC-EC EPA. The EU is of the view that individual countries can only be members of one trading arrangement with the EC.

26. *West Africa*. ECOWAS and Mauritania formally launched phase II negotiations with the EU on 6 October 2003 in Cotonou, Benin. A roadmap for negotiations was endorsed by West African Trade Ministers meeting in Accra on 4 August 2004. The roadmap covers the priorities of the region, highlights the development dimension of the EPA and refers notably to the need for support measures, a timetable and an appropriate structure for the negotiations. The first joint Senior Official's meeting, held in Brussels in February 2005, established Technical Negotiating Groups on: Customs Union and Trade Facilitation; Standardization and SPS measures; Trade-related Issues; and Services and Investment. It was also agreed to establish a fifth negotiating group to examine production sectors. West African countries requested that support for reinforcing production capacity and competitiveness be included in the scope of the EPA negotiations, particularly the mobilization of resources for measures for upgrading and reinforcing production capacities and economic sectors. Initial discussions have been held in technical negotiating groups on customs procedures, trade facilitation and border protection and on TBT and SPS.

D. Ways forward

27. ACP States face the challenge of assuring development gains from EPA negotiations by adequately addressing their offensive and defensive interests and coming up with a responsive development agenda. The ongoing WTO Doha negotiations may have a significant bearing in this regard, particularly in respect of WTO rules negotiations on RTAs, which may affect terms of EPAs, preference erosion and revenue loss in the context of agriculture and NAMA negotiations, and services negotiations that may provide the basis for possible services agreements under EPAs. Negotiations on other issues, including TRIPS, trade facilitation, trade and environment, may also be relevant.

28. Possible gains may be expected from addressing residual market access and entry barriers, such as trade distorting technical, sanitary and environmental regulations, as well as rules of origin, in sectors of export interest to them. This may include an immediate extension of EBA benefits to all ACP States under EPAs, implementing simplified, flexible and realistic rules of origin matched with ACP States' industrial capacities, facilitating recognition of SPS/TBT standards and testing results, and securing high-quality commitments on Mode 4 by the EU. EPAs need to achieve concrete progress in these areas.

29. A major defensive issue for ACP States is the design and negotiation of the appropriate degree, timing and pace of their own market opening under EPAs, as the costs of liberalization may be substantial given their level of tariffs, the importance of the EU as a trading partner, and the importance of tariffs as a source of government revenue and as an instrument of industrial development. Strict reciprocity in market opening, as would be required under GATT 1994 Article XXIV, may have an adverse impact on domestic industries, employment, government revenue, and hence on development finance and development and poverty alleviation prospects. It is essential that appropriate flexibility and SDT for ACP States be embedded in all aspects of EPAs. The introduction of "new issues" such as competition policy and investment in EPAs needs careful consideration to avoid leading to WTO-plus commitments on the part of ACP States that may have implications for their development policy space. The same is true for IPRs.

30. The dual objectives of EPAs are both trade and development cooperation. EPAs should serve as real instruments for ACP States' development and poverty alleviation and for the timely achievement of the Millennium Development Goals. EPAs should further consolidate and strengthen ongoing subregional integration processes in the African ACP regions, including in transport, communications and energy. "Aid for trade", as well as deeper development cooperation, including transfer of technology, and facilitating recognition of qualifications of ACP service suppliers are prerequisites for mutually advantageous outcomes under EPAs. Deeper and ambitious resource transfer should enable ACP States to benefit effectively from EPAs by addressing adjustment challenges, overcoming commodity dependency, building human, institutional and industrial capacities and infrastructure to trade, increasing value added and diversifying their economies.