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TRADE NEGOTIATION ISSUES IN THE COTONOU
AGREEMENT

**AGRICULTURE AND ECONOMIC PARTNERSHIP
AGREEMENTS**



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¹ The views expressed in the chapters authored by UNCTAD staff members are those of the authors and do not necessarily represent those of the UNCTAD Secretariat.

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ABBREVIATIONS

ACP	African, Caribbean and Pacific Group of States
AACP	African ACP States
AMS	Aggregate Measurement of Support
AoA	Agreement on Agriculture (WTO)
CARICOM	Caribbean Community
CoA	Committee on Agriculture (WTO)
COMESA	Common Market for Eastern and Southern Africa
EBA	Everything But Arms
ECOWAS	Economic Community of West African States
EPAs	Economic Partnership Agreements
EU/EC	European Union/ European Communities
FTAs	Free Trade Agreements
GATS	General Agreement on Trade in Services (WTO)
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Co-operation Council
GDP	Gross Domestic Product
GSP	Generalized System of Preferences
LDCs	Least Developed Countries
MDCs	More Developed Countries
MERCOSUR	Southern Common Market
MFN	Most-favoured Nation clause
MNCs	Multinational Corporations
NAFTA	North America Free Trade Area
NFIDCs	Net food Importing Developing Countries
NTB	Non-tariff Barriers
NTCs	Non-trade Concerns
RTAs	Regional Trade Agreements
SADC	Southern African Development Community
SDT	Special and Differential Treatment
SPS	Sanitary and Phytosanitary Measures
TRQs	Tariff Rate Quotas
UEMOA	West African Economic and Monetary Union
UNCTAD	United Nations Conference on Trade and Development
UR	Uruguay Round
US	United States
WTO	World Trade Organization

INTRODUCTION

Following the adoption in Cotonou, Benin, on 23 June 2000 of the Partnership Agreement between the African, Caribbean and Pacific (ACP) Group of States and the European Community and its Member, there is a need for interaction between ACP trade negotiators to assess the implications of the agreement on their trade and development prospects. In respect of trade relations, the Cotonou Agreement provides for the continuation of Lomé type preferences for an interim period from 2000 till 2008, following which new WTO compatible trading arrangements would be instituted. In preparation for this transition from basically non-reciprocal trade preferences to reciprocal trade relations, the Cotonou Agreement requires the ACP States and EU (European Union) to examine and negotiate as of September 2002 the various options available. In this light, the ACP trade negotiators are faced with the immediate task of discussing and elaborating the alternative trading arrangements which they could then propose to the EU. They need to identify arrangements that best promotes their trade and development interests, taking into account their level of development and safeguarding and strengthening their sub-regional and regional integration processes.

At the same time, it is imperative to enhance dialogue between the Brussels-based trade negotiators and those in Geneva involved in negotiations in the WTO (World Trade Organization). The latter are engaged in the mandated negotiations on agriculture and services, provided under the WTO's built-in agenda. The dialogue is important to ensure that the trade interests of ACP States in both the Cotonou Agreement and the WTO Agreements are protected. It is important also to ensure that the new trading arrangements governing ACP-EU trade relations are consistent with the rights and obligations the ACP States would assume under the continuation of the reform process of trade in agriculture under the WTO. The review of trade in agriculture in the case of the ACP States would need to consider also the reform of the EU's common agriculture policy.

The papers in this publication were delivered at a workshop on "Trade negotiation issues in the Cotonou Agreement: Agriculture and Economic Partnership Agreements," co-organized by the UNCTAD/UNDP, the OAU/AEC and the ACP Secretariats from 21 to 22 November 2000, in the ACP House, Brussels, Belgium.

The publication has three parts: Part I deals with agriculture issues such as the task facing ACP trade negotiators in assessing the opportunities and challenges in agriculture trade within the framework of the Cotonou Agreements; the potential implications of the ongoing WTO negotiations on agriculture on the scope for agricultural trade between the ACP States and the EU within the framework of the Cotonou Agreement; and the priorities for ACP States in agriculture trade liberalization and development within the framework of the Cotonou Agreement. Part II dwells on "alternative trading arrangements," primarily the economic partnership agreements. Issues covered are the various options available to ACP States in formulating economic partnership agreements with the EU; the lessons for ACP-EU economic partnership agreements from the experiences of countries and groupings that have concluded or are negotiating trade and development agreements with the EU, including the viability and readiness of ACP sub-regional groupings to participate in economic partnership agreements with the EU; elaboration of some of the priorities for ACP States in areas for further discussion and analysis in the elaboration of their negotiating mandate on economic partnership agreements, and strategies and actions that ACP States can take within the framework of the Cotonou Agreement, to enhance their preparations for international trade negotiations and for building institutional, policy and production capacities for an active participation in international trade. Part III provides the conclusions of the workshop by the Chairman as well as a survey of issues raised by African countries in preparation for the Fourth WTO Ministerial Conference.

The material is aimed to assist the African, Caribbean and Pacific trade negotiators to start to consider and delineate the common key priority issues in respect of alternative trading arrangements with the EU, and in respect of agriculture liberalization. It is also aimed to assist these trade negotiators to identify areas where synergies could be achieved between the Cotonou Agreement and

the WTO trade negotiations and, where possible better coordinate the sequencing of negotiating positions in both forums. Once identified, these priorities could be used as a synoptic tool to promote the trade and development interests of African, Caribbean and Pacific States in the negotiations under the Cotonou Agreement and under the WTO, and also achieve greater coherency between them.

PART I

ISSUES CONCERNING TRADE IN AGRICULTURE

I. AFRICAN COUNTRIES' PROPOSALS AND OBJECTIVES IN THE POST-SEATTLE FRAMEWORK OF WTO TRADE NEGOTIATIONS

Introduction

In broad terms, much of the concerns of African, least-developed and other developing countries with respect to the post-Seattle framework of WTO trade negotiations can be captured in the following set of issues: whether and, if so, the extent of which there exists a development lacuna in the Uruguay Round agreements (URAs); and if there does exist such a significant development lacuna, what can African countries do to integrate a development dimension into the URAs and what would be the most appropriate strategy for accomplishing this goal? A review of the proposals and objectives being articulated by African countries, both individually and collectively, in the context of the on-going discussion within and outside the WTO with respect to the implementation of the URAs and further multilateral trade negotiations cannot ignore these questions. African policy-makers and trade negotiators have struggled with these questions as they prepared for the ill-fated Third WTO Ministerial Conference; their increased participation in the post-Seattle work programme at the WTO appears to have been induced largely by the same set of issues. Even the negotiations between the ACP countries and the EU over the successor agreement to the Lome Convention also appear to have been influenced by these concerns. Both sides (i.e the ACP and the EU) agree that the Cotonou Partnership Agreement, including the yet-to-be fully negotiated trade and cooperation components, would not only need to be "WTO-compatible" but would also explicitly integrate a development dimension.

Rodrik (2000) takes for granted the existence of a development lacuna in the URAs since, as he argues, the WTO framework has a "market access" focus rather than a "development" focus. In other words, the WTO framework is built around the idea of market access; the multilateral negotiations are concerned primarily with hammering out the terms and conditions under which participating countries agree to exchange market access. Thus, the structure of the negotiations is not necessarily designed to take development goals into account and, their outcomes should not therefore be expected to promote development. Given their exclusive focus on market access issues, it should not be particularly surprising that the results tend to neglect key supply-side, human and institutional capacity constraints which are, in fact, the key elements of the developmental concerns of low-income countries in Africa and elsewhere.

It may be argued that the market access focus of the WTO framework fosters greater openness to trade, which tends to promote economic growth. Thus, to the extent that the WTO is about open trade, its framework could be expected to also promote economic growth and development. In empirical terms however, it seems that whether or not and the extent to which, open trade may promote development is contingent upon the appropriateness and adequacy of the human and institutional capacity in the low-income countries. Efforts directed toward superimposing a development agenda on the WTO framework may therefore be viewed in terms of expanding its market access focus to accommodate concerns for human and institutional capacity as well as other supply-side issues.

This perspective guides the analysis in this chapter whose presentation is organized as follows. Section II identifies inherent imbalances that are not only found in the URAs but also characterize the WTO process. It discusses the imbalances in the WTO framework, the Uruguay Round results and the obligations that the least developed and developing countries are expected to fulfill. Most of these imbalances are carried over to the ACP-EU Cotonou Agreement. Section III examines the proposals that have been articulated by African countries to address the imbalances pinpointed in the previous section; it also suggests a comprehensive framework within which the imbalances can be addressed, essentially by incorporating a development dimension in the WTO process. The next two sections (i.e IV and V) shift the chapter's focus to an analysis of the priority issues of common interest to African countries, first with respect to the review of the Agreement on Agriculture (AoA) and further negotiations on agriculture, and then regarding the review of the General Agreement on Trade in

Services (GATS) and further services negotiations. Section VI concludes the chapter by setting out the key negotiation objectives and proposals with which African countries are, or could be, associated.

A. Balances in the WTO Process and Uruguay Round Agreements

Since the completion of the UR multilateral trade negotiations and the coming into force of the associated agreements, research and analysis have uncovered a wide range of instances where existing imbalances have worked against the interests of the least-developed and developing countries, most of which are in Africa. For ease of analysis, it is useful to categorize these imbalances in relation to the WTO framework and negotiation process, the results of the UR, the implementation of the URAs, and the obligations which URAs impose on the low-income countries relative to the benefits they confer. The segmentation implied by this categorization should not be perceived too rigidly since these imbalances actually interact and typically reinforce each other across the different categories. In particular, it is quite clear that some of the imbalances that characterize the WTO framework and negotiation process had consequences for some of the imbalances that feature in the UR results.

The primary focus of the WTO on market access rather than development pre-disposes it towards negotiations that ignore key elements of the development agenda of the low-income countries. This bias of the framework against their interest is further worsened by the participation constraints they have usually faced with respect to a pro-active and an effective engagement with the WTO process, given its huge, complex and increasing workload. There are great disparities in negotiating powers and resources among the WTO member countries. Most of the low-income countries lack both the ability to recognize and argue effectively against proposals that are not in their interests and the capacity to articulate and defend alternative and more acceptable proposals. In this context, the WTO negotiating agenda and the way it is structured has tended to reflect the concerns of the high-income countries.

There are at least two examples that show that imbalances in the WTO framework and negotiation process have biased the results against the interests of low-income countries. The launch statement which started the UR negotiations in 1986 committed the developed countries to a negotiating process that would be built around the prior acceptance of the special and differential treatment (SDT) of low-income countries embedded in the 1979 Framework Agreement. This declaration was viewed, at that time, as an important factor for getting many of the least developed and developing countries to accept to participate in the UR. The issue of SDT was not itself part of the negotiating agenda of the UR but several of its key elements were in fact radically transformed in the course of the negotiations through a piece-meal process that did not permit negotiators to fully understand its implications until the damage was done. The adoption of "Single Undertaking" as the underlying principle of negotiation in the UR, at the behest of the high-income countries, worked in the same direction. What it did was, essentially to force many of the low-income countries to accept a variety of disciplines in areas that were obviously unlikely to promote their development interests. In this way, adoption of the Single Undertaking rule enabled the high-income countries to multilateralize many of the Tokyo Round Codes which many low-income countries had perceived, correctly, to be basically an unnecessary luxury, given their level of development.

Given the imbalances that have typically characterized the WTO framework and negotiating process, it is not surprising to find that the UR results also (or as a result) contained inherent imbalances in terms of the sharing of the accruing benefits among groups of participating countries. At the aggregate level, estimates of the wealth generated as a result of the UR and the impact of the UR, also indicate that Africa, as a region, either suffered a loss or gained very little. In the particular case of the Agreement on Agriculture (AoA), the developing countries were expected to benefit from improved market access and hence, increased exports to the developed countries. This expectation has generally not been fulfilled because the AoA has been implemented in ways that have not, in effect, enhanced the market access of developing countries. Duty tariffication and tariff peaks continue to penalize products of export interest to developing countries and the administration of the tariff quota

system has deprived access to developing countries. Furthermore, many developing and least-developed countries are experiencing market-access difficulties particularly in the area of processed food products where sanitary and phytosanitary (SPS) measures are increasingly used by the developed countries.

Several other URAs are characterized by inherent imbalances against the interests of the low-income countries. A widely recognized example is the TRIPs agreement. In this case, it is generally understood that the agreement would impose substantial short-run costs on the low-income countries. Yet, no mechanism was articulated to show that these countries would receive benefits from other agreements as a compensation or that the costs, which they were called upon to bear, would be offset in some other way.

There are also inherent imbalances in the obligations that many of the URAs impose on low-income countries relative to the benefits they confer. It has become clearer, over time, what the implications of some of these agreements are in terms of the obligations they impose. It is estimated, for instance, that implementing the requirements under the agreements on customs valuation, SPS and TRIPs would cost the typical low-income country as much as US \$150 million - a sum equal to a year's development budget. It is clear that, from a development perspective, the resources required for implementing many of these WTO disciplines could be used to improve the infrastructure in a typical low-income country. While human and institutional capacity building and reform are important elements of the development agenda of low-income countries, the kind of costly institutional changes that are mandated by the WTO obligations are not necessarily consistent with the priorities implied in their development agenda. An attempt by a low-income country to meet its WTO obligation in this context would amount to institutional "crowding-out", whereby a country is forced to sacrifice other more developmentally relevant investment in institution building.

This particular variety of imbalance reflects the fact that countries at different levels of development need different types of institutional reforms. Many of the disciplines in the general area of national regulatory regimes that became subjects of agreements during the UR reflect the agenda of high-income countries. Their implementation calls for institutional reforms that are relatively easy to accomplish by the high-income countries; but such reforms are extremely difficult and costly for low-income countries to carry out. Much more importantly however, many of these reforms are unlikely to be consistent with the development priorities of low-income countries.

It may be suggested that several of the URAs contain offers of technical and financial assistance by high-income countries aimed at helping the low-income countries to meet their obligations. In addition, some of the URAs also contain provisions requiring the developed countries to take into account the interests of developing countries in implementing their own commitments. But both types of measures have not been helpful to the low-income countries. Offers of technical and financial assistance have largely failed to materialize, as have other non-contractual promises of "best endeavor". Two relevant examples of such promises in relation to the AoA are two Ministerial Decisions ostensibly designed to offset any adverse effects of the Agreement on least developed and net food-importing developing countries. In principle, the two Ministerial Decisions were to alleviate the burden on the food import bill and balance of payments and to enhance the capacity of developing countries to increase their agricultural production. But in practice, both Decisions have not provided concrete measures for their implementation.

Besides the imbalances identified and discussed above, there are two other issues that should be considered. First, is there a development dimension to the WTO Agreements? Second, if not, can it be incorporated into the WTO framework in the process of the current reviews of the Agreements and/or in the context of new multilateral trade negotiations?

It has been argued that since the primary focus of the WTO is on market access, perhaps it should not pretend to address development concerns directly. It could be presumed to deal with economic growth and development in an indirect way at best, if it can be shown that (a) market access focus

promotes greater openness to trade and that (b) this, in turn, enhances the prospects for more rapid economic growth and development. The second of these links is precisely the one that cannot be taken for granted, particularly in the case of the least-developed and developing countries of Africa, because it is highly contingent on the domestic human and institutional capacity in these countries. Two key elements of a development dimension that one might, therefore, look for in the WTO Agreements would be provisions for development-oriented institutional capacity building and provisions for enhancing the supply capacity of the least developed and developing countries. This derives from the widely accepted observation that the major obstacle to increased trade and growth in the low-income countries is the inadequate response of domestic producers to market access opportunities abroad. This supply constraint is traceable to several factors, the most significant of which include poorly developed physical infrastructure, and poorly functioning market-system institutions. The world trading system's pre-UR efforts to incorporate a development dimension into its framework are broadly covered by various SDT provisions. In general, these provisions were meant to enhance the market access opportunities of the least developed and developing countries and to permit them flexibility in the use of various trade and trade-related measures. The latter was aimed at enhancing their supply-response capacity to enable them take full advantage of the enhanced market access opportunities provided by the former. The second component of SDT provisions granted substantial policy discretion to the low-income countries in their own domestic markets; thus, they had the right to limit access of developed countries to their own markets. This was based on the widely accepted proposition that the low-income countries need considerable autonomy in the use of various trade policy measures to enhance their domestic supply response.

In practical terms, the enhanced market access component of SDT has fallen far short of its advertised potential. Only about 17 per cent of the imports from the low-income countries into the OECD countries benefit from the preferential market access treatment. The preferential market access schemes are inherently unilateral and time-bound and they contain other restrictions with respect to product and country coverage, rules of origin and "graduation" clauses which render them unreliable as an instrument for promoting long-term development in the low-income countries.

The policy-autonomy component of the SDT provisions were under sustained attack during the UR. In the end, the application of the Single Undertaking ensured that all members of the WTO were required to adhere to nearly the same set of agreements on trading rules. Thus, the scope for SDT-based policy autonomy was considerably reduced. The texts of the URAs essentially redefine the policy-autonomy component in two ways. In some cases, they contain explicit and mandatory "concessions" relating for instance, to higher *de minimis* thresholds for developing and least developed countries (e.g. countervailing duties and safeguards, lower reductions in protection and support levels (agriculture), longer transitional periods (e.g. safeguards, TRIMS), and fewer concessions (GATS). In other cases, the URAs contain extraordinary and "best endeavor" types of SDT language which has proved impossible to enforce. Instances include offers of technical and financial assistance in many of the URAs on rules as well as those that oblige the developed countries to give "special consideration" to the least-developed and developing countries.

Even during the pre-UR era, SDT provisions did not cover the full range of those factors that inhibit export supply response in the low-income countries. To that extent, the pre-UR world trading system did not contain a comprehensive development component. All that it gradually did was to add some elements of this, as it evolved, under pressure. The URAs have stepped back significantly from the previous excursion of the world trading system into an increasing, even through piecemeal, focus on development issues. They have also imposed additional obligations on low-income countries which may divert their scarce resources away from development. Hence, the pre-UR world trading system may be described as much more development-friendly than the post-UR version.

It should not be impossible to change the focus of the WTO framework to reflect greater balance between concerns for market access and development. This would require a more comprehensive restructuring of SDT provisions to ensure that they capture the well-established factors that constrain the supply response capacity of low-income countries. A multilaterally negotiated restructuring of

SDT should proceed to the review of current URAs and further negotiations, because this would ensure greater consistency and coherence as the previously agreed general SDT principles are subsequently applied in the articulation of agreements on specific sectors and rules. This kind of sequencing was absent during the UR process. It is therefore not surprising that SDT provisions vary so widely and inexplicable across the URAs.

The European Union constitutes the main export destination of African countries. Trade relations are covered by the Cotonou Agreement, which overall seeks WTO compatibility. “Economic and trade cooperation shall be implemented in full conformity with the provisions of the WTO, including special and differential treatment” (ACP_EU, 2000, Article 34). Most of the above imbalances are found in the Cotonou Agreement. A key element is the economic partnerships. By Article 37.7 the aim is to establish the timetable for progressive removal of trade barriers. Assessment of constraints and opportunities in case studies reported in Oyejide and Njinkeu (1999) pointed out that the main reasons for the low level of African international trade were high transaction costs, lack of competitiveness and other supply side constraints. Furthermore, each of the Agreements reviewed above, when covered by the Cotonou Agreement use the WTO as the yardstick, e.g. Art. 36.4 on S&D provided through commodity protocols, Art. 46 on TRIPS, Art. 47 on TBT, Art. 48 on SPS. The proposals on negotiations to redress the imbalances in international trade agreements at the multilateral and bilateral (with the EU) levels are basically the same.

B. African Proposals for Addressing the Imbalances in the WTO Agreements

Groups of African countries have seized the opportunity provided by a series of meetings to develop several proposals with respect to their negotiating objectives concerning both the WTO and the ACP-EU agreements. Overall, Africa goes to these negotiations better prepared. Several studies and consultation meetings were undertaken aiming at a better preparation of African countries for the ongoing trade negotiations. Some of these activities have been coordinated by UNCTAD. An interregional workshop was held in Pretoria, South Africa (29 June–8 July 1999) to develop an African positive agenda in the negotiations. Sub-regional meetings were organized for COMESA in Harare, Zimbabwe (16–20 August 1999), ECOWAS in Abuja, Nigeria (23–27 August 1999), SADC in Cape Town, South Africa (3rd September 1999), and ECCAS in Libreville, Gabon (25–29 October 1999). A meeting was also held in Sun-City, South Africa (21–25 June 1999) focusing on the special needs of all LDCs. A further meeting was convened in Addis Ababa, Ethiopia (21–23 July 1999). African trade Ministers met and adopted a platform in Algiers, Algeria (20–24 September 1999) and in Cairo, Egypt (16–20 September 2000). A summary of conclusions from these activities is provided in UNCTAD (1999).

The UNECA prepared reading materials for African delegations at Seattle that have been published in book form in English and French suggesting possible positions for each issue at the negotiations (see UNECA 2000). The African Economic Research Consortium (AERC) completed a project that assessed the constraints and opportunities facing African countries in the WTO framework (see Oyejide and Lyakurwa (2000) and Oyejide and Njinkeu (2000)). Results of the project were discussed at a regional workshop for trade policy officials of Central and West Africa in Yaounde, Cameroon (16–17 April). In collaboration with the World Bank case studies on the agricultural sector in the WTO framework were conducted for several countries and regions (Cameroon (Bamou et. al., 1999), Ghana (Oduro 1999), Nigeria (Ogunkola 1999), SADC (Inani 1999), Tanzania (Msonda 1999), and UEMOA (Kouassy and Pegatienan 1999). In collaboration with the ECA, country level meetings were organized post-Seattle in six countries (Cameroon, Kenya, Mauritius, Nigeria and Uganda) between July and September 2000. Other activities undertaken by various stakeholders, included a workshop on agricultural negotiations during the period 2–6 October 2000 for Central and West African Francophone countries. This chapter draws largely from these preparatory activities.

Proposals were eventually integrated for presentation and defence at the Third Ministerial Conference of the WTO in Seattle. The proposals appear to have been aimed at shaping the international trading system in such a way that the agreements, rules and disciplines which emerge from the system's negotiating process would broadly support and contribute to the structural transformation of the African economies. In this context, the proposals relate to the review of existing agreements and further negotiations. In both cases, they focus on three key areas. First, it is expected that future negotiations would lead to significant improvement in market access for products of export interest to African countries. Second, issues of development are expected to be addressed decisively. In particular, it is suggested that the agreements, rules and disciplines emerging from the negotiations, would strengthen the supply capacities of African countries by providing flexibility in the use of appropriate trade policy instruments. The third area of focus relates to the WTO framework and the negotiation process. In this regard, African proposals cover such issues as the transparency of the negotiating and WTO decision-making process, how the WTO could assist the low-income African countries to enhance their integration into the world trading system through fast-track accession procedures and, more effective implementation of the decisions on the provision of technical assistance.

Table 1 summarizes the relevant proposals arising from selected pre-Seattle preparatory activities at various meetings on the continent; they were recommended also by the Cairo Ministerial meeting in September 2000. Many of these proposals relate more specifically to the on-going process of reviewing the existing WTO Agreements. Not surprisingly, the proposals reflect a great deal of concern by African countries regarding the perceived imbalances and difficulties associated with the implementation of the WTO Agreements dealing with a range of rules and disciplines. The moratorium on the application of the non-violation remedy of the TRIPS agreement needs to be maintained indefinitely, until members review the scope and modalities of non-violation on disputes. Such a review would have to take into account the limited experience of most African countries with the application of the DSU provisions to the TRIPS Agreement. It is also necessary to extend the exclusion of patentability of plants and animals to include micro-organisms. Likewise, the exclusion of patentability of "essentially biological process" should be extended to "microbiological process". The review process should ensure that the conservation and sustainable use of biological diversity, the protection of the rights and knowledge of indigenous and local communities and the promotion of farmers' rights, are fully taken into account. Furthermore African and other developing countries should be able to exercise sovereign rights over their biological resources. They should also safeguard the right of holders of traditional knowledge to share the benefits arising from any related innovation. This could be possible if commercial exploitation of such innovation is encouraged only on condition that the innovators share the benefits through material transfer agreements and transfer of information agreements. The protection of geographical indications as an industrial property measure that provides for protection of all products, whether man-made or natural, needs to be extended to cover agricultural products, foodstuffs and handicraft in addition to wine and spirits.

African proposals on TRIPS are aimed at addressing the observed imbalances in the rights and obligations of the users and holders of intellectual property. The proposals suggest that this can be achieved through several means. First, implementation of the TRIPS Agreement by African countries should be made conditional on transfer of technology to them by the developed countries along with the provision of the technical and financial assistance, which Article 67 of the Agreement offers. Second, the transitional period specified for implementation should be extended, given the difficulties many African countries continue to experience in modernizing their administrative infrastructure and their legal systems, and in strengthening their institutions. The proposals are quite specific about the extension required; it is suggested that the duration of the transitional period should be linked to the adequacy of the resources required to meet the challenges posed by the implementation of the TRIPS Agreement. Similar arguments are made in the proposals regarding the requested extension of the transitional periods associated with the implementation of other WTO Agreements on rules and Customs Valuation. Third, the proposals finally suggest a number of modifications to the TRIPS Agreement. One such modification is the extension of geographical indications to cover products other than wines and spirits so that exclusively African products could benefit from intellectual

property protection. A second proposal requests that African (and other developing) countries should not be prevented from imposing compulsory licensing for essential drugs in the context of implementing TRIPS.

Foreign investment is important to close the savings-investment gap in Africa, especially given the declining trend in foreign aid. Measures used by African governments to attract and protect investments from domestic and foreign sources have been covered by investment codes. These codes have been of national or regional natures. For example, member countries of CEMAC², UEMOA³, COMESA⁴, EAC⁵, CBI⁶ have, or are, formulating regional investment schemes. Countries also have bilateral investment treaties, and most African countries are also members of the Multilateral Investment Guarantee Agency (MIGA). In particular, foreign investment has technological and managerial spillovers, enhancing access to investment, markets and distribution networks.

Simultaneously, several African sectors are still considered strategic and hence not fully ready for the type of environment to be created by some international investment proposals such as the multilateral agreement on investment (MAI). This is not necessarily driven by protectionist motives. The typical African country faces a dilemma. On one hand, the benefits of openness are not questioned but, on the other despite the generous framework provided for FDI, except for some mineral rich countries/sectors the level of FDI on the continent has been very low. An element of the positive agenda for Africa would be studies to determine those investment incentives that are effective in making the continent an attractive investment destination.

Before such a review⁷ is made further liberalization, whether in the framework of TRIMs or a MAI is not warranted⁸. Furthermore, this needs to be coordinated with discussions on competition in the multilateral framework. Overall the TRIMs framework should remain the reference and its reform needs to ensure that the alternative enables the industrialization process. The TRIMs for example have requested the elimination of adverse measures on FDI with a transitional period accorded to developing countries. The MAI envisages the extension of the MFN and national treatment to all aspects of investment. A related requirement is the opening of the capital account, areas where several studies have established that some caution, at the very minimum, is required. This set of reforms would deprive African governments of the right to correct coordination and information failure in the investment process. They would also take away the right to promote the type of economic and social development that correspond to their citizens aspirations. It is therefore important that priority be given to the review and identification of the relevant set of incentives of TRIMs.⁹

African proposals with respect to the review of the TRIMs Agreement make two types of request. One request, which applies to all other WTO disciplines, is for an extension of the transition period within which African countries are obliged to phase-out all prohibited TRIMs. The other argues in favor of the necessity of preserving policy space for African and other developing countries in the

² Communauté Economique et Monétaire d'Afrique Centrale.

³ Union Economique et Monétaire Ouest Africaine.

⁴ Common Market for Eastern and Southern Africa .

⁵ East African Community.

⁶ Cross-Border Initiative.

⁷ The review could analyze the trend and structure of relevant trade and investment indicators. It would also need to carefully assess the components of various national and regional investment incentive schemes, including the investment and trade agreements. It should provide alternative options consistent with the overall development aspirations of African countries at the national and regional levels. Some of the concerns of African countries are shared by other developing countries (see Correa 1999 in the case of Islamic Development Bank member countries).

⁸ This conclusion was also reached by the African Ministers of trade meeting in Harare in 1998.

⁹ In reviewing the situation of the CBI countries it became apparent that the process is likely to be long and will encompass various sectors. The essential conditions for attracting investment include political stability, good governance, macroeconomic reform and stability, trade liberalization, market integration, exchange system liberalization, investment liberalization, and consistency in policy and application (see CBI, 1999).

review of the TRIMs Agreement, as well as in further WTO negotiation on the subject. The African proposals suggest that this can be achieved by exempting developing countries from the aspects of the TRIMs disciplines regarding the application of local-content requirements. The argument in support of this request recognizes the role of performance requirements in building supply and export capacity in developing countries and therefore pleads that the use of TRIMs by African countries should not be further restricted.

In the same way, the participation of African countries in international standard setting bodies is extremely limited and ineffective. Provisions of current agreements that are meant to ensure greater participation of developing and least developed countries have not been satisfactorily implemented. African proposals with respect to the WTO Agreements on sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT) argue that these issues are closely linked to supply capacity. They suggest, therefore, to correct the deficiencies of current agreements and elaborate appropriate enforcement of rules consistent with the capacity of African countries. In addition, technical assistance contained in the two Agreements should be made contractual and binding on the developed countries. Finally, it is requested that the SDT provisions articulated in Article 10 of the SPS Agreement should be made fully operational and given a binding contractual status.

African proposals on the WTO disciplines regarding subsidies and countervailing measures can be categorized into two broad groups. In one group may be placed those that accept the special “concessions” provided for by the so-called Annex VII countries but argue that the list of countries so favoured should be extended to include all low to medium income countries which are so defined by the World Bank. The second group of proposals is aimed at further expanding the range of special “concessions”. For instance, some of these proposals request that the non-actionable categories of subsidies should be expanded to include subsidies for development, diversification and upgrading of industries.

African proposals regarding the general WTO framework and negotiating process address issues of transparency and ways of facilitating the participation of low-income countries. Without being really specific, it is suggested that “Green Room” consultations be opened up to more members outside the “big players” such as the Quad Countries and, that these consultations should not take precedence over, or substitute for, more open decision-making processes embedded in the WTO framework. In addition, the proposals request that an independent group of technical experts should be made available within the WTO Secretariat to carry out investigations on behalf of low-income countries involved in dispute settlement cases.

African proposals regarding the review of the Agreement on Agriculture (AoA) can also be classified into two groups. One group relates to the implementation of the commitments made by the developed countries, while the other group requests further improvements in the concessions in favour of the developing countries. Taking the latter first, requested improvement in the concessions for developing countries covers both market access and greater flexibility with respect to some of the rules and disciplines of the AoA. Thus, it is suggested that the access of developing countries, particularly those in Africa, with respect to primary and processed agricultural exports could be significantly improved if the developed countries were to agree to eliminate tariff peaks and increase tariff quotas in the context of new negotiations on agriculture. Further improvements in market access might also be achieved if the developed countries agree to provide duty-free in-quota rates as well as preferential allocation of tariff rate quota quantities to developing countries.

It is argued further that existing imbalances in the AoA could be partially corrected if developing countries were permitted greater flexibility in domestic agricultural support commitments, especially with regard to measures taken to increase food production and ensure greater food security, as well as targeted measures aimed at protecting the livelihood of small farmers. When this request is cast in the language of the AoA, it can be expressed in terms of amending, the “Green Box” to ensure that it more fully incorporates development-oriented domestic measures. In particular, domestic support measures of developing countries such as agricultural investment and input subsidies should be

included in the “non-actionable” category. Other development related domestic measures such as those meant to enhance agricultural productivity, increase rural development and support subsistence farmers should also be treated as “non-actionable”. Finally, the proposals observe that many African countries could not record some of these domestic agricultural support measures in their schedules of commitments prior to the conclusion of the AoA and, they request that the consequent restriction on the use of such measures of domestic support and export subsidy should be removed.

African proposals on the AoA also make the important observation that the developed countries made commitments under the Marrakesh Ministerial Decision on Measures Concerning Possible Negative Effects of the Reform Programme on the Least Developed Countries and the Net Food Importing Developing Countries. It is suggested that these commitments have been treated largely as “best endeavor” statements, in spite of the clear indication that the problems foreseen by the Ministerial Decision have become quite real and pressing since the conclusion of the AoA. The proposals therefore request that the commitments are made practical and contractual, and that ways and means are found to implement them.

African proposals targeted at the review of the General Agreement on Trade in Service (GATS) and further negotiations in this area are based broadly on the principle that reducing the existing imbalances in commitments under GATS could be achieved by focusing on the liberalization of market access in sectors and modes of supply that are of export interest to developing countries. The proposals generate several concrete requests. The first is that the commitment of developed countries to liberalize market access in sectors and modes of supply of export interest to developing countries should be fully implemented by relaxing restrictions on the movement of natural persons. This request is associated with several related matters. These include the revision of the Annex on the Movement of Natural Persons to remove economic needs tests for specific categories of persons, the establishment of clear and transparent criteria for the application of economic needs tests whenever absolutely necessary and, the binding of current levels of market access granted by developed countries with respect to the temporary movement of service suppliers. Furthermore, the proposals request developed countries to undertake specific, contractual and binding commitments aimed at strengthening the domestic services capacity of developing countries and enhancing the efficiency and competitiveness of this capacity through greater access to technology and improved access to distribution channels and information networks. Finally, the proposals suggest that a linkage should be established between Article IV and Article XXV of the GATS to ensure that the commitment of developed countries to provide technical assistance is made practical by supporting the capacity building efforts of developing countries.

African proposals contain significant requests relating to SDT. These include the need to insert SDT provisions in all future WTO Agreements and to make all such provisions operational and contractual. In addition, they include the idea that SDT provisions should be linked to certain development criteria that must be established with the full participation of African and other beneficiary countries. Taking these proposals further, it is possible to imagine that a re-designed and more comprehensive set of SDT provisions may be a critical component of what is needed not only to redress the imbalances in the existing WTO Agreements, but also to incorporate a significant development dimension into the WTO framework. An analysis of the basic features and evolution of SDT over time may provide a useful background.

In broad terms, provisions relating to various elements of special and differential treatment (SDT) constitute a set of rights and privileges embedded in the GATT/WTO framework for developing and least-developed country members from which their developed country counterparts are excluded. In effect, these provisions are meant to grant the developing and least-developed countries more favorable access to the markets of the developed countries and to give them substantial policy discretion with respect to their own domestic markets.

In principle, the existence of SDT provisions in the GATT/WTO framework reflects the recognition that the multilateral trading system consists of countries at markedly different levels of

development. Because disparities in terms of economic situation and capacities exist among these countries, there are significant differences in the benefits that different countries can reap from the global trading system. Hence, SDT provisions are aimed at relating these to the obligations and commitments that different categories of member-countries should be expected to undertake. SDT provisions are designed to accomplish several objectives, one of which is to enhance market access conditions facing the beneficiaries and thus enable them to exercise some flexibility in the use of various trade and trade-related measures. In operational terms, enhanced market access has been implemented through trade preferences offered by the developed countries on an individual basis to specific developing and least-developed countries. The right of the developing and least-developed countries to regulate access to their own markets is operationalized through the maintenance of trade barriers and substantial exemption from several GATT/WTO disciplines, including permissions to use quantitative import restrictions for both infant industry and balance of payments protection, to establish preferential regional trading arrangements among themselves and, to benefit from tariff reductions achieved in the process of multilateral trade negotiations, in accordance with the MFN principle, without reciprocity. These sets of SDT provisions are obviously inter-related and complementary. The derogation from certain rules ensures that beneficiary countries are not deprived of the essential tools for strengthening their export supply capacity, without which they may not be able to take full advantage of the offer of preferential access to the developed-country markets.

Full development of traditional SDT strategy occurred during the period between the mid-1960s and the mid-1980s. In particular, in 1968 during UNCTAD II, the principle and objectives of a generalized and non-reciprocal system of trade preferences for developing countries received approval. Eventually, by its decision of 25 June 1971, GATT provided legal backing for the UNCTAD agreement. In effect, GATT approved a waiver of the provisions of its Article I for a period of 10 years, thus enabling its developed-country members to offer trade preferences to developing countries, without offending the MFN principle.

It can be claimed that SDT provisions achieved their peak during the Tokyo Round. The 1979 Framework Agreement on Differential, Reciprocity and Fuller Participation of Developing Countries, also known as the Enabling clause offers a fairly comprehensive statement on the core SDT provisions. In particular, it provided a permanent legal cover for the generalized system of preferences (GSPs), it identified the least developed countries as a separate category of GATT members deserving of more favorable treatment than other developing countries and, it codified the “graduation” principle by which developing countries would be expected to take on more and more of the obligations of GATT membership as their economies grew stronger. While specifying the SDT provisions applicable under the Tokyo Round Codes, the Framework Agreement identified three special SDT modalities. First is the offer of technical assistance to developing countries to help them comply with the new rules. Second, it granted the right to weaker disciplines for developing countries in certain respects. Third, it granted exemptions from some of the new obligations on the grounds that the developing countries concerned faced limitations of administrative and implementation capacity.

The launch statement of the UR in September 1986, contained an explicit understanding that developing countries would be accorded SDT in the negotiations in accordance with the terms of the 1979 Framework Agreement. But the adoption of “Single Undertaking” as the guiding principle for the Round ensured that the UR Agreements would radically change the form and content of most of the key elements of the second dimension of SDT provisions, especially as they apply to developing countries. In particular, these Agreements had the effect of reducing the scope of many of the existing SDT provisions, while in other areas, the surviving SDT provisions were reformulated essentially in the form of longer time periods within which developing countries should implement the new agreements. Unfortunately the transition periods were arbitrarily determined, hence the need for a review taking into account the overall objective of integrating African and other developing countries into the multilateral trade system. In other words, the intent of the agreements is that developing countries would be expected, eventually, to meet virtually the same set of standards as the developed countries on a broad range of market access issues. Furthermore, it is important to note that the single

undertaking was introduced towards the end of the UR negotiations and its implications on the world trading system has not been empirically proven.

Thus, many post-UR SDT provisions are expressed in terms of transitional periods and differences in threshold levels as the UR agreements specify how soon and to what extent the developed and developing countries should meet their obligations. In addition, some of the agreements add non-mandatory offers of technical assistance to developing countries in meeting their obligations. The implied eventual convergence in standards of behavior of the developed and developing countries applies, in particular, in such areas as the use of quantitative trade restrictions, offers of special assistance to producers, tariff binding and reciprocity.

For example, the use by developing countries of quantitative restrictions for dealing with balance-of-payments problems has been constrained by the imposition of more stringent rules and procedures. Publicly announced time-schedules for removing existing quantitative restrictions are required, in addition to which there is an explicit preference for "price-based measures" for curtailing imports. Where its use is justified, quantitative import restriction must be limited in duration and be applied on a non-discriminatory basis. Similarly, the right of developing countries to use export subsidies has been sharply curtailed, except for those with per capital income below US \$1000 that are required to eliminate export subsidies within eight years (i.e. by 2003).

Some of the UR agreements appear to preserve some of the pre-UR SDT provisions. For instance, the agreement on technical barriers to trade includes a statement to the effect that developing countries are not required to use international standards which are not appropriate for their needs or which may hinder the preservation of indigenous technology. Similarly, the provisions on safeguards exempt a developing country's exports from counter-vailing measures as long as its share of total imports of the product is 4 per cent or less. For the least-developed countries, most SDT provisions survived the changes introduced in the UR. Perhaps the single most important SDT provisions to survive the UR without modification is the GSP. But the UR did not do anything to eliminate or even reduce many of the restrictions (including the unilateral nature) that have traditionally curtailed the benefits derivable from the scheme. A major drawback of the GSP is its unilateral character.

It may be concluded therefore, that in general, post-UR SDT for developing countries reduces essentially to extended transition periods over which the same levels and scope of obligations as those of developed countries would be assumed by developing countries. But the setting of transitional periods and threshold levels appear haphazard and *ad hoc*, and are not closely linked to or explicable in terms of objective criteria reflecting differences in levels of development or a country's institutional and human capacity. In the light of post-UR implementation experience, the transitional periods and threshold levels appear to have been excessively optimistic in many cases.

The deficiencies associated with post-UR SDT provisions suggest the need for a careful rethinking of the concept, its justification, form and content. The absence of this during the UR probably led to the patchwork of the post-UR SDT provisions. For example, the adoption and wholesale use of "transitional period" appear not to have been carefully thought through. The transition period probably meant to reflect the cost of a change in trade policy rule on an economy. But this is typically associated with at least, three different types of costs; i.e. cost of adjustment, implementation cost and costs of compliance. Some policy changes (e.g. tariff rate reduction) may be associated with minimal implementation and compliance costs, although the adjustment cost could be high if it is a large reduction which is implemented quickly. A long transition (implementation) period could be a way of reducing (or perhaps, spreading out) the adjustment cost. By comparison, a policy change which mandates increased protection of intellectual property rights could be associated with high costs of implementation, compliance and adjustment, to the extent that it involves human and institutional capacity-building for implementation and compliance, in addition to the cost of adjustment. In such a case, the use of a transitional period may by itself, be neither fully adequate nor appropriate for taking account of the full costs associated with the policy or rules change. It is obvious that the limited duration of the transitional periods used to reflect SDT "concessions" in many UR agreements renders

them both inadequate and inappropriate as a basis for a capacity-building programme for enhanced production and trade in the low-income countries.

A redefining of SDT also needs multilateral agreement regarding the classification of WTO member countries and the measurable development, trade and other parameters that should be used in this categorization. Currently, the WTO appears to recognize (implicitly at least) three categories of countries in its membership; i.e. developed, developing and least developed. The WTO indirectly defines the least-developed countries by adopting the United Nations List. This list is defective for at least two reasons. It is income-based and hence does not necessarily reflect trade competitiveness with which the WTO is (or should be) concerned. It also excludes several low-income countries. This may be why the UR agreement on subsidies expands the UN list to include other countries with per capita income of up to US \$1000. The WTO has no specific definition for “developing countries”. In practice, it falls back on an implicit self-designation arrangement that permits countries to so describe themselves. One implication is the difficulty of pursuing the regional integration process along the line of the Abuja Treaty because of countries with comparable difficulties with respect to the objective of the multilateral system.

An explicit categorization of WTO member countries based on a multilaterally agreed set of measurable criteria could also address another question: which countries should be graduated out of which SDT provisions and when? The UR agreement on subsidies offers an example. By categorizing beneficiaries in terms of per capita income, it could express graduation thresholds in terms of measurable economic indicators (i.e. exceeding a specified per capita income over three consecutive years or achieving a specified export share) rather than in terms of a transitional period. Thus, a solution to the problems associated with country categorization and graduation could be a review, adoption and generalization of the principle used in the UR agreement on subsidies. The review could for example ensure that graduation is based on trade performance such as sustained export growth and export diversification. Another alternative has been for the WTO to consider adopting the World Bank’s classification of countries into low-income, middle-income, and high-income countries. This has at least two advantages: it is determined in a transparent way and it enjoys wide acceptability. This income-based indicator could be supplemented by a measure of trade competitiveness (such as manufactured products as a percentage of total exports) to distinguish between least developed countries (less than 20 per cent), developing countries (20–40 per cent) and developed countries (over 40 per cent). Overall, there is a compelling case for a review that classifies most African countries in one category that would be consistent with current economic groupings on the continent.

Furthermore, a redefining of SDT required the identification and negotiation of the multilateral rules for which full or partial derogation should be granted to the least developed and developing country categories. The least-developed countries should probably be granted full derogation, as is essentially the case currently.

Finally, special market access through trade preferences has historically been an important component of SDT. Its actual benefits have fallen far short of the potential due to the many limitations of the GSP scheme. Negotiated MFN tariff reductions have also reduced preferential trade margins. In spite of these, the continued importance of special market access arrangements should not be underestimated. They could provide an important boost to the exports of low income countries, especially if current limitations regarding product coverage, rules of origin and the unilateral nature of the schemes could be eliminated in the context of the proposal to grant duty-free, quota-free and multilaterally-bound access for all exports of the least-developed countries to the developed country markets. This could be made more fully multilateral if the developing countries could also extend multilaterally-bound preferential market access at least 50 per cent of their applied tariff rates to the least-developed countries. The burden of this special market access scheme on the developed and developing countries is likely to be small, given the rather low share of the total export market accounted for by the least-developed countries. The sharing of this burden by the developing countries would be an important way not only to demonstrate “south solidarity” but also to show the readiness of the multilateral trading system to accommodate the needs of its different categories of members.

The various SDT provisions, which evolved in the GATT/WTO framework, were established in response to the perceived special problems of the developing and least-developed countries. Their continued relevance must be shaped by a process of redefining that pays attention to the changing nature and significance of these special features and problems. African member countries of the WTO constitute the largest group of beneficiaries from a redefined more comprehensive and contractual SDT. Many of their proposals for changes in the WTO agreements, both with respect to sectors and rules, can be accommodated through changes in the SDT. Therefore, they have the primary responsibility for promoting the suggested changes in the context of the on-going reviews and future substantive multilateral trade negotiations.

All assessments of WTO Agreements have shown that the impact on African countries is at best limited and continuation along a similar path could increase the region's marginalization in international trade. One explanation for this result is the weak capacity for an adequate understanding of the contents, implications, benefits and constraints of these agreements. Another reason for marginalization is the inability to internalize the agreements in the formulation and implementation of development policies, as well as the operation of the WTO Secretariat programmes such as to adequately reform domestic laws and regulations and to be able to exploit to a maximum the opportunities offered. Weak capacity also concerns the ability of a given sector, country or region to address its supply-side constraints through adequate technical training, industrial development, sectoral capacity building and support programme.

To ensure an effective integration of African countries into the world trading system it is crucial that an adequate capacity-building package that addresses each of these dimensions be designed, especially with respect to the techniques of negotiations and diplomacy, analysis of trade policies, law, and institutional aspects of the WTO accords. Capacity building is also required for adequate representation in Geneva and at the country levels, both in terms of support staff and qualified personnel to monitor the various aspects of the WTO mandate (Blackhurst 1999 and Blackhurst et. Al. 2000). In some cases this will be an upgrading of knowledge, but often the capacity building required is very intensive. Therefore, there is a need to carefully consider the capacity building requirements and amend the existing programmes accordingly.

There are three main imbalances that require attention. First, these programmes need to be enhanced and better coordinated. This could be done by obtaining agreement that increased participation in international trade is designated as a priority objective of the WTO, with technical cooperation activities the fundamental means of achieving that objective. Therefore, it is important that the technical cooperation programme adequately responds to capacity needs in the best way possible, is of high quality, leads to concrete results and, has the greatest possible impact on trade flows. Secondly, there is the need to bring technical assistance programmes under the WTO Secretariat's regular budget and to establish a floor level for resources allocated each year to technical assistance, without prejudice to the possibility of financing specific projects through extra budgetary resources and, to promote excellence in technical assistance activities. Economies of scale could be better exploited through coordinated actions by groups of African countries by shifting the focus to regional economic cooperation. As a corollary, the basic principles of the Integrated Framework would need to be extended to all African regions.

The Cotonou Agreement is sensitive to African concerns with respect to capacity building. The main elements include (1) non-discrimination among members, (2) encouragement of the involvement of beneficiaries' experts, (3) accounting for regional dimensions, (4) encouragement of short and long-term institution building and, staff development for the public and private sectors (ACP-EU, 2000). Deliberations at various positive agenda and confidence building activities on the continent suggest that in most countries trade officials, NGOs and researchers need basic training on the principles of the multilateral trade process, the understanding of various agreements and their relationships with other policy arenas. Policy makers need focused, comprehensible, applicable and appropriately packaged information. Academic researchers are usually not trained in skills to do that. They need new and appropriate skills to communicate more effectively with policy makers. There is a

need to develop the capacity for effective communication between policy researchers and policy makers directly or through intermediary policy advocacy institutions which already have the capacity to effectively disseminate research output or to undertake policy advocacy. One way to address the problem is to adequately reform the university curricula and create, ideally at subregional levels, institutions with a mission to maintain permanent and meaningful dialogue on policy and development issues between private and public sectors, other non-governmental actors and the academic institutions. Synergy and complementarity should be sought at various levels between teaching and research, *between international, regional and national level initiatives and, between teaching and research.*

C. Priority Issues of Common Interest to African Countries in WTO Negotiations on Agriculture

The agenda of WTO negotiations on agriculture includes a review of the existing Agreement on Agriculture (AoA) and emerging new issues associated with further liberalization in the sector. The review of past negotiations will focus primarily on problems arising from the experiences with the implementation of the AoA and, especially, ways of redressing the imbalances in the AoA that the implementation experience may have revealed. African countries have significant common interests in both parts of the negotiating agenda.

African agriculture is widely recognized to be under-developed. At least two key factors are associated with the poor state of agriculture in many African countries. One is the incidence of past policy bias against the sector, and the other is the pro-agricultural policy in many developed countries that has introduced a high degree of distortions into world agricultural markets. By over-taxing agriculture in various ways, African domestic macroeconomic and sectoral policy regimes have traditionally reduced investment incentives in agriculture, while the protection and subsidization of agriculture in many developed countries have had a negative impact on African agricultural exports.

The wide-ranging reforms of macroeconomic and sectoral policies in many African countries since the early 1980s had, in large measure, reduced the policy bias against agriculture. The AoA was expected to eliminate or reduce many of the distortions of world agricultural markets emanating from the protection and subsidization policies of the developed countries. But the AoA implementation experience suggests that this goal is still far from being achieved. In many cases, it is clear that sustained agricultural growth in many African countries requires further improvement of farming capacity through the promotion of productivity - enhancing innovations, as well as the provision of improved infrastructural facilities, farm inputs and credit. These requirements demand the attraction of greater domestic and foreign investment into the African agricultural sector. Given the current state of African agriculture as well as its overwhelming importance in the typical African economy, it is obvious that many African countries should have common interest in issues relating to domestic capacity building in agriculture and, in reducing domestic support and export subsidies in the developed countries. These issues are central to the achievement of the twin goals shared by many African countries of developing their agricultural production and promoting the expansion and diversification of their agricultural exports. The latter places market access at the centre of African concerns in both the review of AoA and new negotiations on agriculture, while the former suggests that the attention should be paid to domestic policy flexibility that may be required not only for enhancing African agricultural production but, also to enable African countries deal with their non-trade concerns associated with the agricultural sector.

Issues of common interest to African countries with respect to market access span the review of the AoA and further negotiations on agriculture. On the review component, perhaps the most important concern is that existing provisions in the AoA and their implementation have created imbalances by continuing to permit substantial agricultural protection, domestic support and export subsidies by the developed countries. To redress this imbalance, African and other developing

countries would have to demand significant reductions in the protection, domestic support and export subsidies currently provided by the developed countries. This involves changes in several areas, including obtaining significant reductions in the total aggregate measures of support (AMS), making AMS reduction commitments product - specific, limiting the applicability of the peace clause (Article 13 of AoA), and ensuring that export subsidies which displace domestic production are eliminated or, at least, significantly reduced. The “Green Box” presents a special problem in this regard. According to Article 6.1 of the AoA, subsidies provided under this heading are neither subject to specific limits nor to reduction. Yet, the AoA implementation experience shows that the Green Box had provided the legitimacy for the developed countries to raise rather than lower their overall domestic support levels, in direct violation of the spirit, if not the law, with respect to their reduction commitments under the AoA. Ways to deal with the problem created by the Green Box include tightening up of the criteria for including any domestic support measure in it, or perhaps more pointedly, accepting that all domestic support measures can be trade distorting (directly or indirectly), placing all such measures in a “general subsidies box” and counting them as part of the total AMS which is then subject to reduction.

Several other areas needing change as a means of enhancing market access for African agricultural exports during the process of reviewing AoA include the use of complex tariffs and the tariffs rate quota (TRQ) system by the developed countries. The goal, in this area, would be to eliminate the use of complex tariffs and enhance the opportunities for African exports. This involves expanding the TRQs in general and making its administration more transparent.

African countries also face major challenges with respect to market access in terms of raising the SPS/TBT standards of their exports to international standards. In this context, the gaps between where they are now and where they must be are dishearteningly wide. Strategically, there could be two points of focus for African countries in the review of the SPS and TBT agreements. One would be to link to their support for the strengthening of the agreements to the concretization and effective operationalization of the commitments by developed countries to provide financial and technical assistance to developing countries contained in the agreements. The other is to ensure the operationalization of their commitment to enhance the participation (in terms of the both number and effectiveness) of African countries in the activities of the international standard-setting bodies.

The new negotiations on agriculture should also offer African countries the opportunity to expand their agricultural exports through improved market access. In this context, the major challenge is posed by the post-UR tariff profile of many developed countries that is typically characterized by relatively high rates on temperate-zone food products and lower rates on tropical products. In particular, tariff peaks are most common in the following three agricultural product groups: major food staples, fruit and vegetables, and processed food products. These are precisely the products where the market is still expanding. Hence, the goal of expanding African agricultural exports cannot be fully met in the absence of enhanced market access in these areas. Therefore, African countries must seize the opportunity offered by new negotiations to press for a reduction of tariff peaks as well as the elimination of tariff escalation whose existence could frustrate the diversification of African agricultural exports in the direction of processed food products.

The development of their agriculture requires that African countries be permitted some flexibility in the use of trade and trade-related policies. A distinction can and should be made, in this context, between the protection, domestic support and export subsidies that are used by the developed countries which distort world's markets, and those that may be used by African countries - as part of their greater policy flexibility - to promote agricultural production, ensure food security, and diversify agricultural exports. In seeking greater policy flexibility to take account of developmental and other non-trade interests, African countries will no doubt be reminded that Article 6 of the AoA specifies some measures that are considered developmental. These are programmes designed to encourage agricultural and rural development and include such measures as investment subsidies, and agricultural input subsidies generally available to low-income or resource-poor producers. In addition, the “Green Box” contains a number of developmental measures, including general services to

agriculture (e.g. research and extension, pest and disease control), public stockholding for food security purposes, crop and income insurance schemes and structural adjustment.

Overall, the typical African country's agriculture is limited by lack of capacity to respond to emerging opportunities offered by URAs rather than lack of market access. Supply-side constraints as well as institutional and human capacity especially limit the firms' competitiveness. Consequently, the ability to fulfill WTO commitments is limited because of an inefficient administration, and low levels of human and financial resources. As a result, in spite of the potential positive effects of the multilateral liberalization, simulation of impact on food security in Cameroon showed negative outcome on both agricultural supply and macro-economic performances (Bamou et al. 1999). However, it is shown that negative effects can be attenuated if the country is financially and technically assisted in the creation of a conducive economic and institutional environment.

One framework for accounting for the challenges of African agriculture in the multilateral system is the "Development Box" that had been proposed as an addition to the AoA by several developing countries, including African countries. A "Development Box" goes considerably beyond these goals and measures. First, it would address not only developmental but also non-trade goals. Thus, it would aim at protecting and enhancing domestic food production capacity, increasing food security, sustaining employment for the rural poor, assisting small farmers to increase their production capacity and enhance their competitiveness. Second, the measures proposed will include not only those currently available under the SDT and Green Box provisions of AoA but also the use of tariffs and the declaration of particular agricultural products that developing countries would wish to exclude from the disciplines of the AoA provisions on the grounds of non-trade concerns. It is within the same context that African countries might wish to consider the use of the special safeguard (SSG) as a permanent instrument for a limited number of sensitive basic foodstuffs.

Africa contains the largest number of least-developed countries and net food-importing developing countries that are also members of the WTO. Hence, relevant WTO decisions affecting these two categories of countries constitute part of the common concerns of African countries. In this respect, the Marrakesh Ministerial Decision is, of particular interest to Africa. Therefore, in reviewing the AoA, African countries should be expected to demand that the commitments made by the developed countries under this Decision should be effectively implemented. Effective implementation of the Decision requires several steps, starting with its establishment as a legally binding commitment at par with other elements of the AoA. In addition, appropriate mechanisms need to be created to accomplish the next two steps; i.e. to determine how the affected countries can become eligible for receiving the financial and technical assistance offered by the Decision, and to determine how the assistance will be funded.

Introducing a development dimension into the general WTO Framework and taking account of the non-trade concerns in the AoA may, perhaps, be more systematically accomplished through the articulation and multilateral negotiation of a more comprehensive set of SDT provisions. Whether elements of these are then reflected in each WTO Agreement drawn around particular sectors or rules and disciplines could then be a matter of emphasis.

Issues specific to the Cotonou agreement are centered on commodity protocols. Protocols offer preferential treatment either in terms of access, prices or both. In the case of sugar and beef/veal these products are also produced by EU farmers and are covered by the CAP that significantly keeps their prices higher. Reforms of the CAP, by reducing their prices, will have direct relevance to the ACP producers. All four protocols are under quota protection. Except for beef, that is subject to specificity duty, all other products covered by protocols are exempt from all duties. The arguments for the negotiations of the protocols are basically the same as those above relating to the SDT.

Discussions on protocols need to address three interrelated issues. The first is to ensure that the legal status beyond 2005/2010 maintains the main advantages. Second, a case could be made for including the protocols in what is not covered by the "substantially all trade clause" in Article XXIV

or V of GATS, or an appropriately enhanced GSP. Third, the introduction of technical assistance clauses in the process that would minimize the impacts on the beneficiaries of commodity protocols of the reforms in the CAP. Given that the proposed super GSP is likely not to erode the preference margins for non-LDCs, one way of limiting the impact on African countries would be to obtain a reclassification giving all African regions LDC status.

D. Priority Issues of Common Interest to African Countries in the WTO Negotiations on Services

Although the inclusion of trade in services in the UR negotiations was vigorously resisted by the developing countries, the General Agreement on Trade in Services (GATS) eventually emerged from the negotiation process with the goal of establishing the basic architecture of the set of principles and modalities which would guide liberalization of trade in services while also obtaining market access commitments with respect to as many service sectors from as many countries as possible. In reviewing the GATS, the new negotiations will also aim at eliminating or reducing adverse measures that affect trade in services, paying particular attention to the unfinished agenda on rules in such areas as emergency safeguards, government procurement, and subsidies. The new round of negotiations will also attempt to increase the general level of specific commitments, bearing in mind the need to ensure an overall balance of rights and obligations and, the mutual interests of all participating countries. In particular, there is a commitment that the new negotiations will have a special focus on identifying sectors of export interest to developing and least developed countries for which market access liberalization can be negotiated, as a means of enhancing their participation in world trade in services.

From the perspective of African countries, the process of reviewing GATS should lead to a recognition of an issue of priority interest to them. This is that the implementations of GATS so far, suggest that African countries are penalized by undue restrictions imposed on the movement of suppliers of services and, by a series of other barriers, including anti-competitive practices in air and sea transportation, and professional and business services. In general, there appears to be an imbalance and asymmetry in the treatment of the modes of services supply. The imbalances negatively affect the export interests of various African countries. While sectoral agreements have been negotiated with respect to sectors such as telecommunications and financial services in which developed countries have clear comparative advantages, there has been much less progress on the sectors and modes of supply in which African countries may have an advantage. Hence, new rounds of negotiations should provide an opportunity for African countries to argue in favour of the elimination of a range of barriers against the movement of natural persons.

Currently, the movement of natural persons, especially from Africa, faces many barriers and barrier-like formalities including visa requirements, quotas and residence permits. African services providers are also often subjected to economic needs tests (ENT) and qualification requirements. Typically, the entry of African services providers into many developed countries for the purpose of rendering professional services is conditioned upon the determination that no national of these countries is available and qualified to provide such services on the same conditions. Qualification and licensing requirements of professional bodies also serve as an entry barrier against African services providers whose local qualifications are often not recognized.

It would also enhance the market access of suppliers of services from African countries if developed countries could make commitments that eliminate these barriers against the movement of natural persons. In the alternative, it has been suggested that an ENT Exemption List should be established in favour of low-income countries to cover services sectors and categories of professions for which ENT would not be used as a barrier against such movement. When this is combined with a system of short-term exemptions from visa requirements for services providers or an arrangement that provides automatic visas, there could be better progress in achieving the objective of enhancing African participation in world trade in services.

A second common issue of priority interest to African countries concerns whether or not special SDT provisions need to be built into GATS. The answer to this probably depends on which component of GATS is under discussion. With respect to market access, the GATS framework involves a built-in approach to SDT that is unique and quite different from the one used in other UR agreements. It can be argued that this framework builds SDT-type “concessions” into the market access component of GATS through the following three innovative mechanisms. Firstly, market access and national treatment are negotiated concessions relating to specific services sectors or sub-sectors. Secondly, the negotiated commitments are based on a positive list approach. This allows each country to make liberalization commitments and implement them gradually as they fit into particular circumstances. Thirdly, under Article XIX:2, low-income countries are explicitly permitted to exercise the policy flexibility of opening fewer sectors and, liberalizing fewer types of transactions, even though it is expected that they will progressively expand market access to foreign suppliers as their level of development rises. Finally, low-income countries are allowed to attach specific conditions to their market access liberalization. Such conditions may include technology transfer, training, local content requirements, etc. It should be noted that while these special GATS provisions (in particular, Article IV and XIX) are meant to promote the increased participation of low-income countries in world services trade, they have not (yet) been fully operationalized and implemented. In particular, no clear mechanism has been established for implementing these provisions. Hence, a priority issue of common interest for African countries would be to focus on remedying this deficiency. This involves designing and implementing arrangements through which developed countries can be made to fulfill their commitments in the following three areas;

- assist in strengthening the domestic services capacity of low-income countries, and in enhancing their efficiency and competitiveness through access to technology;
- improving the access of low-income countries to information networks; and
- liberalizing access to markets in sectors and modes of supply of export interest to low-income countries.

As GATS evolves beyond market access to embrace rule-making areas such as safeguards, government procurement, and subsidies, the need to develop specific SDT provisions may become crucial. There could well be two different routes that can be taken to accomplish the objective. One is to have a comprehensive set of SDT provisions which would apply across all WTO Agreements. The other is to design agreement-specific SDT provisions. In the case of the latter, it would seem reasonable to proceed by adopting or adapting SDT provisions that have been designed for similar subjects in the context of GATT 1994 or the AoA. In any case, it would be important to build consistency and coherence into agreement specific SDT provisions.

Finally, African countries also share a priority issue of common interest regarding the degree of market access commitment they should make in the new round of negotiations and in which sectors. The challenge that they must face, individually and in some cases sub-regionally, is to effectively link their liberalization commitments and the speed of their implementation to their national development policy objectives. In particular, it would make sense for African countries to offer market access concessions with respect to sectors and modes of supply that may be expected to assist in enhancing the efficiency and competitiveness of their domestic services capacity. *A priori*, the services sectors and modes of supply whose efficiency will improve their infrastructure and means of delivering services, should probably be at the top of the priority list of many African countries. Examples of such sectors include basic telecommunications, energy supply, and air and maritime transportation where the injection of foreign investment, management and competition could make significant contributions to services output and efficiency. In making market access concessions in such sectors, African countries should also take advantage of their right to attach conditions, such as technology transfer and training, that enable them to enhance the capacity and efficiency of their services sectors.

REFERENCES

- ACP-EU (2000). The Cotonou Agreement, ACP-CE 2117/00, ACP Secretariat.
- Bamou, E., Njinkeu, D. and Douya, E. (1999). Agriculture and the New Trade Agenda in the WTO 2000 Negotiations: Economic Analyses of Interests and Options for Cameroon, Mimeo.
- Blackhurst, R. (1999). "Capacity Building in Africa for Enhanced Participation in the WTO" Paper prepared for the Dissemination Conference of the AERC Collaborative Project on Africa and the World Trading System (Yaounde, 17-18 April), Mimeo.
- Blackhurst, R., Lyakurwa, W. and Oyejide, A. (2000). "Improving Africa's Participation in the WTO", *The World Economy*, 22.1.
- CBI (1999). Road Map for Investment Facilitation, A paper prepared by the co-sponsors of the Cross-Border Initiative (CBI) presented at the Fourth Ministerial meeting, Mauritius October 1999.
- Correa, C. (1999). Issues for the Member States of the Islamic Development Bank in the Built-in Review of the Agreement on Trade-Related Investment Measures (TRIMs) of the WTO. A study prepared for the IsDB and UNCTAD, Mimeo.
- Inani and Associates (1999). Agriculture and the New Trade Agenda in the WTO 2000 Negotiations: Economic Analyses of Interests and Options for SADC countries Mimeo.
- Kouassy, O. and Pegatienan, J. (2000). WTO 2000 And Agriculture in Africa: The Case of WAEMU Countries, Mimeo.
- Msonda, F. (1999). Agriculture and the New Trade Agenda in the WTO 2000 Negotiations: Economic Analyses of Interests and Options for Tanzania, Mimeo
- Mwega, F. (2000). The WTO "Millennium" Round Negotiations on "Trade and Investment" and Implications for Africa, A paper prepared for the World Bank Project WTO 2000. Mimeo
- Ndiaye, A. Diagne, I., Rostene, J. and Fine, J. (2000). Post ADF Electronic Commerce in Africa, A report on the African Development Forum'99. Mimeo.
- Njinkeu, D. and Soludo, C. (2000). Industrializing Africa Using the WTO Framework, Mimeo.
- OAU/AEC (1999). Key Issues in the Current ACP-EU Negotiation. Technical report No.1 prepared by African Negotiators and by an OAU Advisory Panel of Experts on ACP-EU Negotiations.
- Oduro, A. D. (1999). Agriculture and the New Trade Agenda in the WTO 2000 Negotiations: Economic Analyses of Interests and Options for Ghana, Mimeo
- Ogunkola, E. O. (1999). Agriculture and the New Trade Agenda in the WTO 2000 Negotiations: Economic Analyses of Interests and Options for Nigeria, Mimeo
- Oyejide, A. and Lyakurwa, W. (eds) (2000). Africa and the World Trading System: Framework and Concepts. A book based on an AERC collaborative project.
- Oyejide, A. And Njinkeu, D. (2000). Africa and the World Trading System: Case studies. A book based on an AERC collaborative project.

UNCTAD (1999). "African Positive Agenda" Chapter VIII of Implications of multilateral and subregional trade agreements on the economy and external trade of Zimbabwe, UNCTAD (UNCTAD/DITC/TNCD/3), (Forthcoming).

UNECA (2000). *Africa and The Multilateral Trading System and the WTO: Seattle and Beyond*, Addis Ababa.

Table 1
Suggested Negotiating Objectives of African Countries for the WTO and the ACP-EU Negotiations

OAU/AEC Ministerial Algiers, Algeria, 20-24 September	SADC, Cape Town, South Africa 3 September	ECOWAS, Abuja, Nigeria 23-27 August	COMESA, Harare, Zimbabwe 16-20 August	Positive Agenda Workshop, South Africa, 29 June-2 July
1. General principles and Systemic Issues				
Development dimensions with binding commitments based on trade and finance needs. Flexibility through S&D on key interests. <i>Peace clause</i> : refrain from initiating disputes. Standstill: continue until formal conclusion of negotiations. Coordination among partners in addressing supply constraints. Adequate financing of technical assistance from regular WTO.	Development issues addressed. Coherent and mutually supportive negotiating objectives Flexible use of policy instruments to accommodate supply constraints. Promote regional integration. Peace clause and restraint initiating disputes during negotiations. Standstill on access conditions, for the duration of the negotiations. Enhanced and contractual technical assistance programs.	Policy coherence in global economic management	Coherent and mutually supportive trade negotiating agenda in WTO and ACP - EU especially with respect to contents and timing. Policy coherence among international organizations	Flexibility in use of policy instruments to enhance structural transformation. Advance regional integration objectives. Independent legal and technical experts within the WTO to assist in dispute settlement cases. Complementarity and coherence in international economic policy-making. Level of implementation of WTO obligations linked to sufficient technical assistance.
2. TRIMS, TRIPS, SPS and TBT				
TRIPS/TRIMS Transitional periods accounting for availability of resources for implementation. Effective transfer and dissemination of technology. Compulsory licensing of essential drugs for their supply at reasonable prices. Extend moratorium on application of non-violation remedy.	TRIPS/TRIMS Review Article 71.1 accounting for implementation experiences. Mandatory technical and financial assistance, and transfer of technology. Transition linked to adequate resources for effective technological development. Remove restrictions on essential drugs for adequate health care. Extend transitional period of the phase-out of prohibited TRIMs. SPS and TBT Provision of technical assistance and S&D operational and binding.	TRIPS/TRIMS Extend transition period. Make mandatory the application of Articles 7, 8, 40, 66 and 67 for an adequate framework for access to technology. Remove restrictions on essential drugs for affordable and adequate health care. SPS and TBT Contractual technical assistance. Product from developing countries exempted from higher than the international standard.	TRIPS/TRIMS Implementation conditional to the transfer of technology. Article 66.2 extended to all developing countries. Effective technical assistance; transition linked to financial, trade and development needs. Exemption from disciplines on local-content requirement. Use of TRIMs to build supply and export capacity. SPS and TBT Effective and legally binding technical cooperation Financial compensation when measures disrupt or cause serious financial losses Exemption from higher than the international standard.	TRIPS/TRIMS Transitional period linked to modernization of administrative infrastructure, legal systems, and strengthening institutions. Incentives for transfer of technology extended to all developing countries. Compulsory licensing for essential drugs for their supply at reasonable prices. Binding commitment on transfer of technology. Provision in TRIMs on local-content requirements. Another opportunity to notify TRIMs measures. Exemption from disciplines on domestic-content requirement SPS and TBT Contractual technical assistance targeting technology transfer.

OAU/AEC Ministerial Algiers, Algeria, 20-24 September	SADC, Cape Town, South Africa 3 September	ECOWAS, Abuja, Nigeria 23-27 August	COMESA, Harare, Zimbabwe 16-20 August	Positive Agenda Workshop, Pretoria, South Africa, 29 June-2 July
3. Agriculture Negotiations				
Food Security Revise Marrakesh Ministerial Decision on effect on NFIDCs	Market Access Enhance the access rights including under commodity protocols. Domestic Support Greater flexibility to developing countries in commitments. Flexibility in the use of extent of <i>de minimis</i> provisions Food Security Issues of food security and the development of rural areas taking into account inherent difficulties and constraints to diversification Commitments on LDCs and NFIDCs made contractual Tools to shift away from food insecurity.	Market Access Possible uses of export subsidies by developing countries, in certain circumstance, as an S&D treatment. Domestic Support Support to build agricultural supply capacity, including enhanced marketing skills. Flexibility to recalculate AMS. Amend Green Box with development oriented measures. Include measures such as investment subsidies and input subsidies in the 'non-actionable' category. Food Security Contractual commitments to LDCs and NFIDCs. Assistance for increased agricultural productivity. Adequate food aid	Market Access Identical treatment of bilateral, regional and multilateral commodity protocols. Possible uses of export subsidies as S&D treatment. Domestic Support Allow new AMS commitments. Exempt from the reduction commitments on investment subsidies and input subsidies. Raise de minimis level of support for developing countries. Food Security Make contractual the commitment on LDCs and NFIDCs. Tools to shift away from food insecurity to increase agricultural productivity.	Market Access Improved preferential market access to exports. Credits for unilateral trade liberalization. Special consideration for security net against a rise in world food prices. Domestic Support Flexibility in the use and extent of de minimis support. Criteria in Green Box reviewed and to incorporate development-linked support measures. Include in Green Box domestic countries support measures of Article 6.2. Food Security Make contractual the commitments on LDCs and NFIDCs.
4. Services Negotiations				
	Flexibility, including granting credit for autonomous liberalization		Support to capacity building. Exemptions from the MFN treatment. Appropriate flexibility for opening sectors according to specific needs and conditions.	Flexibility in liberalization Strengthening of domestic services capacity, efficiency and competitiveness. Concrete capacity building. Liberalization of electronic commerce linked to technical and financial support.
5. Recommendations concerning LDCs and small economies				
Tariff bindings at zero rates for products originating in LDCs. New impetus to the Integrated Framework for Technical Assistance.	Bound, duty free treatment. Simplified rules of origin, tailored to capacity, Binding commitments for technical assistance. Food assistance. Special positive measures based on a vulnerability index.		Supports for building agricultural supply capacity.	Full and expeditious implementation of commitments for LDCs. Special attention to needs of small and vulnerable economies
6. ACP-EU, Rules of origin, regional integration and Special and Differential Treatment (S&D) in Favour of Developing Countries				
10 year waiver of Lomé preferences. Consistency of Agreements with regional integration efforts. Keep the Enabling Clause.	Product specific rules of origin tailored to industrial capacity. Adequate sequencing of negotiations, and building up of necessary human and financial capacities as well as addressing supply constraints	Rule of origin simplified harmonized, to fully benefit from GSP arrangements. ACP-EU built on Abuja Treaty. Post-Lomé accounting for WTO rules and ACP-EU cooperation. 10-year transition period needed.	10 year waiver from the WTO. Greater flexibility of the multilateral rules concerning Regional Trade Agreements (RTAs). Preserve commodity protocols. Harmonisation and simplification of protocols.	Retain Enabling Clause for Regional schemes. Amend Article XXIV to cater for trade with developed partners. WTO to account for commodity protocols.

<p>OAU/AEC Ministerial Algiers, Algeria, 20–24 September</p>	<p>SADC, Cape Town, South Africa 3 September</p>	<p>ECOWAS, Abuja, Nigeria 23–27 August</p>	<p>COMESA, Harare, Zimbabwe 16–20 August</p>	<p>Positive Agenda Workshop, Pretoria, South Africa, 29 June–2 July</p>
<p>Improvement of financial and commodity instruments. S&D firmly established. Best endeavor provisions to enhance clarity, implementation and verification. Continuation of non-reciprocity. Capacity building Expanded transitional periods..</p>	<p>Flexibility in Art XXIV for arrangements with developed countries/regions. S&D Operational and contractual S&D provisions. Mainstream S&D in all agreements. S&D provisions linked to development criteria</p>	<p>Amendment of rules of origin and own rule for the African FTAs. WTO waiver for the ACP -EU. Flexibility for improving supply capacities. S&D Firmly established S&D. Continuation of non-reciprocity; Transfer of technology; Transition period based on economic indicators. Legal coverage of S&D. Transitional periods linked to adequate technical assistance or improved competitiveness.</p>	<p>rules of origin.</p>	<p>Amendment of rules of origin and own rule for the African FTAs. WTO waiver for the ACP -EU. Flexibility for improving supply capacities. S&D Firmly established S&D. Continuation of non-reciprocity; Transfer of technology; Transition period based on economic indicators. Legal coverage of S&D. Transitional periods linked to adequate technical assistance or improved competitiveness.</p>

Source: UNCTAD (1999)

II. WTO AFRICAN GROUP AGRICULTURE PAPER

Introduction and Overview

The proposals in this chapter reflect the collective view of the African Group to WTO, as at November 2000, in the discussion of critical issues that are to be addressed during the negotiations on agriculture. The Group and its members reserve the right to further elaborate its concerns.

The importance of agriculture in the economies of African countries cannot be overstated. In 30 of the 53 African countries, the agricultural sector is the main source of rural livelihoods and employs more than two-thirds of the labour force. Agriculture generates more than a third of GDP (gross domestic products) in most African countries and only in 15 countries is the sector's share of GDP less than 15 per cent. For the region as a whole, agriculture accounts for 40 per cent of exports.

However, it is also well known that despite major policy reforms in recent years, African agriculture is generally under-capitalized with relatively low levels of productivity leading to weak backward and forward linkages within agriculture and with other sectors. This in turn reinforces the low growth syndrome and pervasive poverty, including high levels of food deprivation that characterize many African countries. To this extent, economic growth in most African countries depends critically on the performance of agriculture as the main stimulus to growth in other sectors and to development more generally. In a global economy that is increasingly driven by advanced technologies, Africa remains the only continent in which an 'agricultural revolution' is required not only to facilitate broad-based development but also to achieve food security.

Yet, current imbalances in the structure of world trade in agriculture as regards market access, domestic support and export competition policies have virtually put the attainment of these objectives out of the reach of many African countries. In regard to market access, while Africa's commodity and raw material exports face minimal – or, are accorded preferential- tariffs in their major markets, dynamic and high value-added products face substantially higher tariffs as a result of the tariff reduction formula that was adopted during the Uruguay Round. Moreover, exports of these dynamic products and categories that are further up the value-added chain face increasingly higher non-tariff barriers posed by sanitary and phytosanitary (SPS) regulations and standards in major markets. Import quotas also remain tight.

By contrast, the agricultural sector in African economies, especially in the least developed countries (LDCs), underwent unilateral liberalization and deregulation prior to the conclusion of the Uruguay Round and the level of liberalization attained exceeds the level required by their commitments under the Agreement on Agriculture (AoA).

As far as domestic support is concerned, these payments – including Green Box measures – by OECD countries have risen significantly during the late 1990s, in response to the collapse in commodity prices. For the OECD countries as a group, domestic support reached a record of US\$ 361 billion in 1999. As a percentage of gross farm receipts, OECD support to domestic producers increased from 31 per cent in 1997 to 40 per cent in 1999. In percentage terms it is the same level as it was in the mid-1980s.¹⁰

Similarly, the use of export subsidies increased significantly during the late 1990s. In 1998, the European Union in particular accounted for almost 90 per cent (i.e. US\$ 5.8 billion) of total world export subsidy use. This was roughly four times larger than the average agriculture value-added (GDP) of low-income African countries in the same year. Cheap, subsidized imports undermine the

¹⁰ UNCTAD, *Current Developments on Issues of Interest to African Countries in the Context of post-Seattle WTO Trade Negotiations* (Geneva: UNCTAD, September 2000, pp. 28–29).

viability of African agriculture and delay the prospect of making a break from the stranglehold of poverty and underdevelopment.

The overall effect of developed countries' market access, domestic support and export competition policies is to weaken existing and potential agricultural exports of African and other developing countries thereby removing a major incentive that the modernization of African agriculture requires. Moreover, continuing underdevelopment of the agricultural sector also impacts on food security.

African countries face an unacceptable situation in which their own producers and food processors are being squeezed out of international, regional and even national markets. This has already had the effect of limiting the effectiveness of national policies designed to add value to agricultural raw materials as a means of to promote more sustainable patterns of poverty-focused economic growth.

These concerns are reflected in the contributions of some African members – often in concert with similarly concerned developing country members – during the analysis, information and exchange (AIE) exercise; during the Seattle preparatory process; and within the framework of the current special session exercise. The aim of the present chapter is to consolidate these contributions to reflect more fully the perspective of the African group on the issues without prejudice to the position of any member of the group.

A. Proposals

General Principles

As indicated in the preamble of the AoA, the objective of the reform of trade in agriculture should aim at correcting and preventing restrictions and distortions in world agricultural markets through the establishment of strengthened and more operationally effective rules and disciplines.

The reform programme should aim to:

- (1) strike a balance between agricultural trade liberalization and food security concerns;
- (2) ensure tangible market access to the agricultural products of developing countries, especially products in dynamic and higher value-added categories;
- (3) level the playing field in the international trading environment; and
- (4) reflect agricultural concerns specific to developing countries in relation to the structure, framework and long-term objective of the AoA.

Market Access Issues

- (a) Existing tariff peaks on actual or potential export products of developing countries should be eliminated. A list of such products should be established.
- (b) Tariff escalation should be eliminated with a view to enhancing product diversification to higher value-added products in developing countries. A list of such products should be established.
- (c) Developed countries should grant tariff-free and quota-free market access for exports of LDCs.
- (d) The product coverage and operations of preferential market access schemes for LDCs and net food importing developing countries (NFIDCs) should be continued and improved.
- (e) Measures should be taken to assist small-scale developing country exporters to benefit from tariff rate quotas in major markets.
- (f) With a view to reducing imbalances on the level of actual tariff barriers, tariff reductions by developing countries should be made on bound rates and developing countries should be given the option of maintaining the current level of bound rates (i.e. no reductions) on key staples.
- (g) The negotiations should address the need for technical and financial assistance to developing countries, especially for meeting the cost of compliance with SPS measures and technical

standards (e.g. costs to obtain certification, costs incurred from delays in authorization) in the international market.

- (h) Special Safeguard Measures (SCM) should be made available to all developing countries. In particular, the principle of automatic access would involve the following:

Developing countries could draw up a list of the products concerned, based on the sole criterion that the products are produced domestically on a relatively large scale and that their global price is distorted by anti-competitive prices.

The trigger levels (volume price) should be set annually by the countries concerned either on the basis of their domestic consumption (volume on the previous year) or on the basis of their domestic costs (price).

The additional duty would be fixed either on the basis of the domestic production costs of the country concerned or on an average of the guaranteed prices for the products on the markets of developing countries.

Export Competition Issues

- (a) Export subsidies provided by developed countries should be eliminated but LDCs and NFIDCs should enjoy flexibility to provide export subsidies in order to promote the export of agricultural products with potential
- (b) Export credits should be subject to internationally agreed rules to avoid circumvention of disciplines on export subsidies.

Domestic Support Issues

- (a) Trade distorting domestic support (AMS) in developed countries should be substantially reduced at a very early stage in the reform programme to eliminate the imbalance in the use of such measures between developed and developing countries.
- (b) Disciplines should be established to limit the extensive use of Green Box measures by developed countries to achieve a level playing field.
- (c) The Blue Box provision should be eliminated.
- (d) The *de minimis* limit for developing countries should be increased from the current 10 per cent.
- (e) Article 13 .b (ii) of the Agreement on Agriculture should be reviewed so as to increase flexibility in the use of the *de minimis* measures and to provide that input and investment subsidies available to low-income resource-poor farmers will be non-actionable.
- (f) Flexibility should be provided to developing countries with zero AMS commitment, due to their lack of budgetary resources, to provide AMS support if this is in line with their development programmes.
- (g) Development policy measures of developing countries, which target the viability of the small-scale subsistence farmer, rural poverty alleviation, and product diversification, are important elements to be included in a possible Development Box. The elements included in the Development Box should take into account the need to strengthen vulnerable domestic producers and to improve their export competitiveness.

Special and Differential treatment (SDT) Issues

- (a) LDCs and NFIDCs require flexibility to apply measures to safeguard small farmers against import surges and unfair trade practices, particularly those affecting the production of key staples.
- (b) Existing SDT provisions in the AoA should be made operational particularly as regards rural development, poverty alleviation and food security of developing countries.

- (c) SDT provisions should take account of specific situations of different groups of developing countries, such as small island developing countries and land-locked developing countries.

Ministerial Decision on NFIDCs

- (a) The Ministerial decision should be made operational and should aim at solving the long-term food security problems of LDCs and NFIDCs, rather than at short-term needs in food aid.
- (b) Special consideration should be given to possible effects on LDCs and NFIDCs of reduction or possible elimination of export subsidies, and the effect of an internationally agreed discipline on export credits.
- (c) The mechanism of injecting food aid into the domestic market should be targeted so as to avoid disruption of domestic production.
- (d) The specific areas where technical cooperation is required from development partners include increasing agricultural productivity, infrastructure building, market information dissemination, and export enhancement.
- (e) Consideration should be given to the setting up of a fund for technical and financial assistance. In particular, the fund should be able to trigger financial assistance in case of future price increases above a certain threshold and on the condition that food imports are bought in open, unsubsidized, competitive markets.

Other Issues

- (a) Development partners and the international financial institutions have generally taken the view that developing countries should move away from dependence on low demand products with stagnant prices to products with stronger demand growth and by moving up the value chain through value added activities.
- (b) However, as previously noted, this view is contradicted by the actual policies of developed country partners with respect to the agricultural sector. Greater policy coherence is therefore required from all partners including the international financial institutions.
- (c) The programmes of the Bretton Woods institutions should conform to WTO rules and obligations. LDCs and NFIDCs should not be required to accept market liberalization or subsidy reduction commitments exceeding the commitment levels accepted at the WTO, nor at a pace exceeding that in the WTO Agreements, nor which exceed the capacity of adjustment of these countries.
- (d) The WTO commitments should reflect the fact that many LDCs and NFIDCs have unilaterally liberalized their agriculture trade to such an extent that they only have tariffs as effective trade policy measures.
- (e) Credit should be accorded to developing countries for their autonomous liberalization.
- (f) Specific conditions prevailing in the agricultural sectors of those countries acceding to the WTO should be taken into account in their accession negotiations.

III. ACP-EU SUGAR ARRANGEMENTS: THEIR NATURE, IMPORTANCE AND PROSPECTS

Introduction

The objective of the chapter is to highlight some of the critical issues that ought to be taken into account when discussing the future of sugar arrangements between the African Caribbean and Pacific (ACP) countries on the one hand and the European Union (EU) on the other hand. This will be achieved through an analysis of the ACP-EU sugar arrangements within a framework that is defined by two agreements. One of these is the Economic Partnership Agreement signed between the 77 ACP countries and the 15 member states of the EU on 23 June 2000 in Cotonou, Benin. The other is the World Trade Organization (WTO) Agreement on Agriculture (AoA) signed at the end of the Uruguay Round (UR) of negotiations, effective from January 1995.

Debates are proceeding in the Special Negotiation Sessions of the WTO Committee on Agriculture (CoA) as mandated in the AoA. The first phase of these negotiations will cover the period up to March 2001. It comprises the presentation and motivation of negotiating proposals as well as the tabling of background papers prepared by the WTO Secretariat upon request from member countries. A stocktaking meeting will be held in March 2001. The second phase will start thereafter and focus on detailed negotiations of the submitted proposals. The details of the second phase (such as issues to be tackled, time frame and procedural matters) have not yet been agreed. However, informally, there are two forms of *modus operandi* which seem to be emerging. The first is the creation of working groups that will have different chairmen and may meet parallel with each other whilst the second is holding plenary sessions chaired by the Chairman of the CoA. Each has merits and demerits.

The rest of the chapter is divided into five sections, all of which are designed to reveal the important issues to be kept in mind in discussions that impact on the future of ACP-EU sugar arrangements. Section 2 sets the scene by describing the nature of the current ACP-EU sugar arrangements. Section 3 discusses the importance of sugar industries in the ACP economies and indicates how the Cotonou Agreement recognizes this importance. Section 4 outlines the WTO AoA as well as the sugar experience under it. Section 5 summarizes the debate that is going on at the WTO agriculture negotiations in the cross-cutting areas of non-trade concerns (NTCs) as well as special and differential treatment (SDT) for developing countries. The outcome of this debate will have implications for the sugar industries in the ACP countries. Finally, Section 6 summarizes the major conclusions emanating from the analysis.

A. Nature Of ACP-EU Sugar Arrangements

Sugar arrangements between the EU and ACP countries are governed by two agreements – namely, the Sugar Protocol and Special Preferential Sugar Agreement. The former came into existence prior to the first Lome Convention of 1975 whilst the latter came into existence in 1995. The Sugar Protocol has an indefinite lifespan of its own. It was only annexed to the Lome Conventions for administrative reasons. The quota allocations under the Sugar Protocol are as reflected in Table 1.

Table 1
Sugar Protocol Tonnage Allocations

COUNTRY	TONNES	COUNTRY	TONNES
Barbados	50 312,4	Malawi	20 824, 4
Belize	40 348,8	Mauritius	491 030,5
Congo	10 186,1	St. Kitts/Nevis	15 590,9
Cote d'Ivoire	10 186,1	Swaziland	117 844,5
Fiji	165 348,3	Tanzania	10186,1
Guyana	159 410,1	Trinidad and Tobago	43 751,0
Jamaica	118 696,0	Zimbabwe	30 224,8
Madagascar	10 760,0	TOTAL	1294 700,0

Source: ACP (2000 :10).

Table 2
Guaranteed Sugar Protocol Prices

YEAR	NOMINAL PRICES (Euro/100 kg)	CONSTANT 1986 VALUES (Euro/100 kg)	CONSTANT 1986 VALUES (US\$/tonne)
1986-1987	44,92	49,57	511,68
1987-1988	44,92	49,27	564,72
1988-1989	44,92	47,36	556,14
1989-1990	44,02	44,40	488,54
1990-1991	43,94	42,22	537,36
1991-1992	43,94	40,17	501,41
1992-1993	43,94	39,80	524,52
1993-1994	43,37	39,32	471,02
1994-1995	43,37	37,46	458,38
1995-1996	52,37	36,34	487,18
1996-1997	52,37	35,46	458,62
1997-1998	52,37	34,74	404,37
1998-1999	52,37	34,16	388,80
1999-2000	52,37	33,71	345,39

Source : ACP (2000 :10-11).

The Special Preferential Sugar Agreement, we note that it has a six-year duration – expiring in June 2001. Its total volume is essentially determined by the difference between the needs of EU refiners and available sugar within the EU system. The first 75 000 tonnes is shared by the Group of Four (namely, Cote d'Ivoire, Malawi, Swaziland and Zimbabwe). The rest is then shared on the basis of a 50/50 formula. The first 50 per cent is allocated evenly among the qualifying countries (i.e., Sugar Protocol signatories) and the other 50 per cent is allocated on the basis of the Sugar Protocol proportions reflected in Table 1. The first bite of 75 000 tonnes for the Group of Four was in recognition of the sacrifice that these countries incurred by supplying Portugal at prices lower than they would then have obtained from the world market. This was before Portugal acceded to the European Economic Community.

At an ACP Ministerial Conference on Sugar held in Swaziland in September 1999, it was resolved that a lobby campaign should be mounted at the political and commercial levels to have the Special Preferential Sugar Agreement renewed when it expires. In accordance with that resolution, lobby missions have been to a number of capitals in the EU selected on the basis of strategic considerations. At the commercial level, discussions have been held and are still ongoing between representatives of the ACP sugar industries and EU refiners. Some of the points raised by the ACP sugar industries in these discussions are the good record of having reliably supplied all the requirements of the EU refiners, preparedness to address quality aspects and the importance of the Special Preferential Sugar Agreement to the ACP countries.

There are pressures against the renewal of the Special Preferential Sugar Agreement from at least three sources. One of these is the allegation that it is WTO-incompatible because it excludes other

developing countries. A second source is the push by some countries (Kenya, Uganda, Zambia and other small quota holders) to have increased shares of the Sugar Protocol. Because there is no country prepared to give up its quota and there is no creation of new quotas by the EU, the Special Preferential Sugar Agreement was used recently as a temporary relief. The possibility of accommodating other demands in the future cannot be ruled out. A third source is the recent proposal by the European Commission (announced in September 2000) that all products, with the exception of arms, from least developed countries (LDCs) will enter the EU markets duty-free and quota-free with immediate effect. In the case of sensitive products (of which sugar is one), the phase-in-period will be three years. All of these sources of pressure represent significant threats for the Special Preferential Sugar Agreement. A spirit of cooperation and solidarity within ACP can minimize the inherent risk.

The greatest attraction of both the Sugar Protocol and Special Preferential Sugar Agreement from the perspective of the ACP countries is the guaranteed market access at guaranteed prices. The Special Preferential Sugar Agreement prices are basically a proportion of the Sugar Protocol prices. It is on the basis of these guarantees, together with the indefinite lifespan of the Sugar Protocol, that ACP sugar industries have been able to undertake considerable investments. More importantly, as an ongoing process, they are involved in improving technical and economic efficiencies at both field and factory levels. This has happened despite the fact that nominal prices have largely been stagnant and real prices have been on a downward trend. The situation is shown in Table 2.

Table 3
Estimated Losses to ACP
Sugar Suppliers Due to Euro Depreciation

COUNTRY	1999 – 2000 (US\$ 1,000)
Barbados	4,655
Belize	3,733
Congo	942
Cote d'Ivoire	942
Fiji	15,298
Guyana	14,749
Jamaica	10,982
Madagascar	996
Malawi	1,927
Mauritius	45,431
St. Kitts/Nevis	1,442
Swaziland	10,903
Tanzania	942
Trinidad and Tobago	4,048
Zimbabwe	2,796
TOTAL	119,788

Source : ACP (2000 :14)

On top of the decline in the real value of the prices received by ACP countries, there has been a loss due to the recent depreciation of the Euro vis-à-vis the US Dollar. The currencies of ACP sugar suppliers are directly and indirectly linked to the US Dollar. Thus their income depends on, among other things, the Euro/Dollar exchange rate. Since the introduction of the Euro in January 1999, the decline in the effective value of the guaranteed price has accelerated. The aggregate losses to the ACP countries from this source have been estimated at US\$ 120 million. They are distributed as shown in Table 3.

B. Sugar Industries in ACP Economies and the Cotonou Agreement

Sugar industries in ACP economies play a crucial multifunctional role. They make considerable contributions to national output, employment, foreign exchange earnings, public revenues, research and development, economic diversification, rural development, social stability and social services (housing, education, medical care, clean water and recreational services). Table 4 presents statistics reflecting considerable contributions to employment and foreign exchange earnings.

Although the successive Lome Conventions, representing twenty-five years of cooperation between the ACP countries and the EU, produced many benefits, the overall growth in trade has not been impressive. Against this background, the Sugar Protocol stands as a success story. Whilst it is true that the real value of the traded sugar has declined due to inflation and unfavourable foreign exchange rate movements, nevertheless, sugar industries have contributed tremendously to the development of the ACP economies. They have taken advantage of the guaranteed market access at guaranteed prices (even if in nominal terms only) to undertake considerable investments to expand capacity and improve efficiency. It was on account of this high profile of sugar industries in the ACP economies and the sensitive nature of sugar that it has received special treatment in the Cotonou Agreement.

The Sugar Protocol has an unlimited period, a distinct legal persona and, can be implemented outside the Cotonou Agreement to which it is annexed for administrative reasons. In this connexion, Article 3(2) of the Sugar Protocol provides that:

“In the event of the Convention ceasing to be operate, the sugar supplying states ... and the Community shall adopt the appropriate institutional provisions to ensure the continued application of the provisions of the Protocol.”

The undertaking by the EU to buy ACP sugar for an indefinite period at guaranteed prices in contained in Article 13 of Annex V (Trade Regime Applicable During the Preparatory Period) which is stated as follows :

In accordance with Article 25 of the ACP-EEC Convention of Lome signed on 28 February 1975 and with Protocol 3 annexed thereto, the Community has undertaken for an indefinite period... to purchase and import, at guaranteed prices, specific quantities of cane sugar, raw or white, which originates in the ACP States producing and exporting cane sugar and which these States have undertaken to deliver to it.

The Sugar Protocol is compatible with the overall aims of the Cotonou Agreement, especially in the area of poverty eradication. The benefits of the guaranteed market access and prices are transmitted in a transparent manner to millers and growers in ACP countries. Indeed, sugar has become an effective means of grassroots human development as more and more smallholder sugarcane growers enter the industry. Sugarcane growing provides stable earnings whilst being environmentally friendly.

C. The WTO Agreement on Agriculture and the Experience of Sugar under it

The primary objective of the AoA is to “establish a fair and market-oriented agricultural trading system (through) substantial progressive reductions in support and protection” (Article 20). It provides for commitments by signatory countries in the areas of market access, export competition and domestic support. These areas are the main pillars of the AoA. In the area of market access, signatory countries were compelled to convert all non-tariff barriers (i.e., quantitative and non-quantitative restrictions of a non-tariff nature) into tariffs. This was referred to as tariffication. Once

tariffication was accomplished, members were prevented from resorting to the non-tariff barriers (NTBs) to trade except in those cases provided for in the schedules submitted by members as part of special safeguards or special treatment.

The tariff equivalent of an NTB was calculated as the difference between the internal selling price and the CIF (cost insurance and freight) price of a product for the base period 1986-88, expressed as a percentage of the FOB (free-on-board) price. The resulting tariff equivalent was referred to as the base rate. More developed countries (MDCs) committed themselves to the reduction of the base rates by a simple average of 36 per cent with a minimum of 15 per cent per tariff line (i.e. per product) over a period of six years whilst developing countries committed to the reduction of their base rates by an average of 24 per cent with a minimum of 10 per cent per tariff line over a period of ten years. The rate achievable after the reductions became known as the bound ceiling beyond which countries were not supposed to go when imposing tariffs.

To ensure that the tariffication process did not result in an even more restrictive atmosphere due to the selection of high tariff rates, signatory members agreed that there would be a commitment to certain import quantities. The latter were fixed at a minimum of three per cent of consumption where there were no significant imports during the 1986–1988 base period. Where there were significant imports during the base period, then the minimum import quantities were set at the average annual level. This minimum was to increase to 5 per cent over a period of five years (i.e. to 5 per cent by the year 2000).

Developing countries were exempted from the tariffication process where there was no previous binding (ISO 2000:6-7). In this case, they were permitted to continue using NTBs but only in the case of the agricultural products specifically mentioned in the country schedules submitted under Annex 5 of the AoA. This became one aspect of SDT for developing countries. There are other aspects of SDT covered in at least 72 other different provisions in the Marrakesh Agreements signed at the end of the UR (ISO 2000:3).

In the area of domestic support, member countries were required to calculate the amount extended to producers over the period 1986–1988 based on agreed procedures. It covered domestic price support and public budgetary outlays that had an impact on agricultural support. The latter could be product specific or non-product specific. Domestic price support was computed as the gap between a fixed reference price in the base period and the actual administered price multiplied by the quantity of production eligible to receive the price support.

Budgetary outlays were then added to the domestic price support to arrive at a total referred to as an aggregate measurement of support (AMS). It was agreed that this global amount of support would be reduced by 20 per cent over six years in the case of MDCs and by 13 per cent over ten years in the case of developing countries. In WTO jargon, the support measures involved in the AMS are contained in an “amber” box – a colour that was initially selected to signify measures that are acceptable even though they have a distortionary impact on production and trade.

Exempted from the reduction commitments are measures referred to as “*de minimis* requirements”. These cover cases where the product-specific amount of support is less than 5 per cent of the value of production of the product in question in a given year in the case of an MDC and 10 per cent in the case of a developing country. Where the *de minimis* requirement applies, the support measure is counted as zero in the AMS. In addition, developing countries are permitted to include the following measures in their amber boxes without having to include them in the reducible AMS (Preamble and Article 6 of the AoA) :

- investment subsidies for promoting agricultural production;
- agricultural input subsidies targeted at low-income or resource-poor producers; and
- subsidies to promote a shift of production away from illegal narcotic crops.

There are two other types of measures which are exempted from the commitments to reduce domestic support. In WTO jargon, they are referred to as “blue box” and “green box measures.” The former have a distortionary effect on production and, therefore, trade; whereas the latter have little or no distortionary effect on production and trade (e.g. insurance schemes or environmental payments). The blue box measures would not be subjected to the reduction commitments if they are based on a fixed agricultural area or yield; based on a fixed number of livestock or, made on 85 per cent or less of the base-period level of production.

In the area of export competition, each member undertook not to provide export subsidies that were not specified in the schedules submitted to the WTO. The schedules were themselves calculated over the base period 1986–1990. The agreement was that the export subsidies would be reduced within certain parameters. A country was then free to grant export subsidies as long as they remained within the agreed parameters. The latter were a reduction of the value and quantity of export subsidies by 36 per cent and 21 per cent, respectively, over six years (i.e. up to 2000) per product in the case of MDCs and by 24 per cent and 14 per cent, respectively, over ten years (i.e. up to 2004) per product in the case of developing countries.

This investigation of the sugar experience under the AoA is important because Article 20 of the AoA requires that the experience gained must be taken into account in the new round of negotiations. It will be based on analysis done by the International Sugar Organization. The analysis concludes that “for sugar generally, there have been few gains in improved market access through minimum access arrangements using tariff quotas” (ISO 2000 :25). This conclusion is not surprising in view of the sensitive and political nature of sugar as well as the preferential trading arrangements on sugar.

There are two major preferential sugar arrangements – namely, ACP-EU and the United States tariff rate quota (TRQ). The United States did not commit to any increase in its TRQ because at the time of the UR negotiations it was importing about 15 per cent of its sugar consumption (which was above the 3 per cent requirement) from a wide array of countries – mainly developing countries. However, it was required to continue providing the TRQ at an unreduced level (which amounted to 1,139 million tonnes). It has indeed stuck to this minimum. Access to the TRQ is duty free for countries enjoying eligibility under the generalized system of preferences (GSP). Once the GSP status is lost, then access is at a certain customs duty rate – itself bound under the WTO commitments.

The minimum access provisions under the AoA had little implications for the EU because it was importing about 10 per cent of its consumption under its preferential arrangements with ACP countries. A total of 1,305 million tonnes white sugar equivalent enters the EU market duty free under the Sugar Protocol, whilst about 86 000 tonnes enter at a special duty under the Special Preferential Sugar Agreement. Access for other developing countries outside the contracting ACP group of countries is almost nil because the base level tariff remains high and there is an additional safeguard duty. However, this may change in the future since the EU first agreed that “essential all” imports from LDCs will enter the EU duty free by the year 2005 (ISO 2000 :30) and more recently that “everything but arms” will enter duty free immediately, with sugar being phased over a three-year period because of its sensitive nature (EU Economic Commission, 22 September 2000).

In the case of domestic support, only twelve developing countries have reduction commitments for agriculture. Most other countries did not have to make the reduction commitments because their AMS was low and even negative (i.e., there were taxes levied) in the base period. The highest levels of domestic support for sugar are to be found in the sugar beet sectors of MDCs – particularly the EU, the United States and Japan which have high trade volumes. WTO commitments have made little change to domestic support levels in these countries. To the extent that the unreduced support levels are of benefit to some developing countries (under the EU and the United States preferential trade arrangements), the case for their reduction is not straightforward. This is one area where innovative SDT provisions should be designed to assist developing countries.

In the case of export subsidies, commitments for reductions were made by three developing countries (namely, Brazil, Colombia and Mexico) and six others. The latter group comprises South Africa which elected to be classified as a MDC and therefore had higher commitments over a shorter period of time. Due to significant unilateral policy changes in all these countries, the commitments have become redundant (ISO 2000 :34). Despite having not violated the reduction commitments, export subsidies granted by the EU based on sugar are still a source of unfair competition for developing countries which cannot unilaterally raise their import tariffs because of WTO commitments. For instance, Swaziland cannot unilaterally raise the Southern African Customs Union (SACU) import tariff on sugar-based products enjoying EU export subsidies and entering SACU duty-free under the EU-South Africa Trade, Development and Cooperation Agreement which came into effect in January 2000.

A group of countries, spearheaded by Australia, have come together to form an alliance whose objective is full liberalization of the sugar trade sooner than later. This group calls itself the Global Alliance for Sugar Trade Reform and Liberalization. It was formally launched in November 1999 in Seattle, when a communiqué was issued (Global Alliance 1999). It calls for the abolition of preferential sugar markets, the removal of domestic support for sugar producers and, the elimination of export subsidies on sugar. Beneficiaries under the ACP-EU sugar arrangements as well as the United States tariff rate quota are naturally opposed to this proposal. The outcome in the new round of negotiations is likely to be somewhere between the two positions.

D. Major Cross-Cutting Issues of Interest to ACP

In general, debates in the Special Negotiating Sessions of the WTO CoA are conducted within the framework provided by the Preamble to the AoA as well as paragraphs (a)–(d) of Article 20. These are reproduced as follows :

PREAMBLE : Commitments under the reform programme should be made in an equitable way among all Members, having regard to non-trade concerns, including food security and the need to protect the environment, having regard to the agreement that special and differential treatment for developing countries is an integral element of the negotiations, and taking into account the possible negative effects of the implementation of the reform programme on least-developed and net food-importing developing countries.

ARTICLE 20 : Recognizing that the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process, Members agree that negotiations for continuing the process will be initiated one year before the end of the implementation period, taking into account :

the experience to that date from implementing the reduction commitments;
the effects of the reduction commitments on world trade in agriculture;
non-trade concerns, special and differential treatment to developing country Members, and the objective to establish a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to this Agreement; and
what further commitments are necessary to achieve the above mentioned long-term objectives.

As of 17 November 2000, a total of thirty-three proposals had been received from individual countries and groups of countries (listed in Annex A), as well as a total of twenty-one technical/background papers produced by the WTO Secretariat at the request of members (listed in Annex B). In addition to these proposals and background papers, there are extensive notes prepared by the Secretariat to capture deliberations in the Special Negotiating Sessions of the CoA. There are two cross-cutting issues that have not only received high profile debate in the CoA, but also have serious implications for ACP sugar industries. These are NTCs and SDT. The issues involved will be summarized under the next two sub-headings.

Non-Trade Concerns (NTCs)

The main issues at stake could be represented in terms of two basic approaches – namely, market and interventionist. Countries subscribing to the market approach argue that the agricultural trading system must be governed by the same disciplines as those governing trade in general with very few, if any, NTCs taken into account. Countries subscribing to the interventionist approach on the other hand argue that market forces will not be sufficient to accommodate the multifunctional nature of agriculture. In their view, a fair trading system should also comprise the preservation of agriculture's capacity to produce positive externalities beyond the production of food and fibre.

The disagreement between the two approaches lies predominantly in the perceived characteristics of agriculture. The market approach, which argues for a full integration of agricultural products into normal trade disciplines, perceives agriculture as having no special characteristics when compared to other sectors. The interventionist approach, on the other hand, argues that agriculture has special characteristics in the form of positive externalities which cannot be produced to socially optimal levels if there is only reliance on market forces.

Farming is said to be the fabric of rural society and, in many countries, it is the main economic activity. Any sudden and profound changes which impacted negatively on the agricultural sector could have severe consequences in terms of social and political stability in developing countries.

The interventionist school argues that increasing market access for basic food commodities can result in a reduction of incentives for local production, especially in countries where producers are less competitive due to specific circumstances or in countries with fragile production structures or low incomes. Given the need to safeguard a certain level of domestic production for the fulfillment of societal objectives, local conditions may require specific instruments to allow farmers to continue production on less favourable areas or under regulations establishing less competitive situations.

The market school counters this argument by maintaining that encouraging production in less suitable regions results in a misallocation of scarce resources which, in turn, lowers global production and income. Moreover, where the more efficient producers are in developing countries, their inability to access MDC markets because of their protection for NTC reasons results in an inequitable distribution of production. This can be avoided by basing international agricultural trade on comparative advantage.

In a rejoinder, the interventionist school points out that those countries who want trade to be based on comparative advantage typically have large land spaces from which economies of scale can be generated. They point out that for many developing countries, this is not the case. If the relative production cost concept was applied strictly, there are many developing countries who would quickly lose out because of small land spaces.

In the debate, the countries subscribing to the market approach accuse the other side of trying to prevent competition in international trade. The countries subscribing to the interventionist approach accuse the other side of trying to reduce their social welfare. Both sides have countries coming from both the MDC and developing country camps.

Special and Differential Treatment (SDT)

Because of its cross-cutting nature, this issue features in a number of proposals already on the table. It is given central treatment in two papers – namely, 13 (23.06.00) and 55 (10.11.00). There is a general acceptance of the principle that SDT must not end with just longer timeframes for the implementation of commitments, but must also look at the nature, depth and substance of the commitments. Swaziland has come out in full support of this sentiment at the Special Negotiating Session of the CoA held on 17 November 2000.

In addition, it has formally made the following points in the context of the three pillars of the AoA :

- Export subsidies : Whilst Swaziland shares the view that developing countries must continue to use existing flexibility with respect to export subsidies, it feels that their immediate elimination and unconditional prohibition in the case of MDCs (a proposal by ASEAN and the Cairns Group) is too drastic and harsh. It is preferable to have a gradual reduction especially where export subsidies have implications for the welfare of developing countries either from the production or consumption side. Moreover, the notion of “substantial down payment” can be counterproductive in that to achieve it, some countries may deliberately engage in a long-drawn out negotiation process just to extend the point at which it becomes effective.
- Domestic Support: Swaziland has a problem with the suggestion that “developed countries must commit to a substantial down payment of aggregate and specific support (a proposal by ASEAN and the Cairns Group). The problem stems from the suggestion that even sensitive products must not be excluded. There are many developing countries who are exporting to the MDCs under preferential arrangements. They are able to develop and diversify their economies precisely as a result of the preferential arrangements that are inter-twined with domestic support measures in the MDCs. Accordingly, energies should be focused on a gradual and orderly reduction rather than “substantial down payment and prohibition”.
- Market Access : Swaziland endorses the principle of full liberalization of trade in tropical products via tariff reductions as well as the elimination of tariff peaks and tariff escalations. It also endorses the principles of non-discrimination and non-reciprocity in the context of GSP since they are consistent with the letter and spirit of the “Enabling Clause”. However, it is to be emphasized that those developing countries who are using preferential trade arrangements to develop their economies should not be stopped dead in their tracks by this proposal. There should be no group of developing countries made worse off in an attempt to improve the welfare of other developing countries.

E. Conclusion

This chapter set out to highlight some of the critical issues that ought to be taken into account when discussing the future of the ACP-EU sugar arrangements. This was done within a framework defined by the Cotonou Agreement as well as the WTO AoA. The critical issues can be summarized as follows :

- (1) ACP economies have made major strides as a result of the preferential sugar arrangements, especially guaranteed market access at guaranteed prices for an indefinite period in the case of the Sugar Protocol and a semi-fixed period in the case of the Special Preferential Sugar Agreement.
- (2) Agreement (semi-fixed in the sense that there was always an expectation of a renewal).
- (3) The sugar arrangements have been the best avenue for channeling resources directly to growers and millers and thereby attacking the problem of human development at grassroots levels. Moreover, the sugar arrangements are transparent and predictable.
- (4) The sugar arrangements are consistent with the primary aim of the Cotonou Agreement to eradicate poverty in the ACP countries.
- (5) So as not to neutralize the progress achieved so far by ACP sugar producers, there must be a careful, imaginative and innovative way of operationalizing the SDT concept. Care should be taken not to raise the welfare of any sub-group of developing countries at the expense of others.
- (6) In the area of NTCs, there is a large measure of commonality between the ACP countries and the EU. There has to be an imaginative and innovative way of accommodating NTCs in the WTO agriculture negotiations such that both ACP countries and the EU are not made worse off.
- (7) In recognition of the high costs of adjustment, there must be a gradual and orderly movement towards a new dispensation that differs radically from the current one.

- (8) By virtue of the fact that some of the support measures in the EU are inter-twined with the benefit levels enjoyed by ACP sugar producers, there is a commonality of interests. This has to be recognized in discussions impacting on the future of the sugar arrangements.

Annex A

Negotiating proposals and comments by countries or groups of countries' issues as of 17 November 2000

Country / Countries	Title of proposal or contents of statement	Number (& date) G/AG/NG/W
Cairns Group ^a	Export Competition	11 (16.06.00)
Canada	Market Access	12 (19.06.00)
Developing Countries Group	Special and Differential Treatment (SDT) and Development Box	13 (23.06.00)
Developing countries Group	Green Box /Annex 2 Subsidies	14 (23.06.00)
United States	Comprehensive Long-Term Agricultural Trade Reform	15 (23.06.00)
United States	Domestic Support Reform	16 (23.06.00)
European Communities	Blue Box and Other Support Measures to Agriculture	17 (28.06.00)
European Communities	Food Quality – Improvement of Market Access Opportunities	18 (28.06.00)
European Communities	Animal Welfare and Trade in Agriculture	19 (28.06.00)
Argentina	Export Subsidies	20 (14.07.00)
Australia	Introduction of Cairns Group Proposal on Export Competition	21 (11.07.00)
Brazil	Comments on Paper by Secretariat on “Agricultural Trade Performance by Developing Countries”.	22 (11.07.00)
Canada	Introduction of own Market Access Proposal	23 (11.07.00)
European Communities	Introduction of own Papers as well as Comments on US, Cairns, Canada, and SDT Papers.	24 (11.07.00)
Japan	Comments on Domestic Support, Market Access, Export Disciplines, DCs and Secretariat papers.	27 (11.07.00)
Mauritius	Comments on Cairns Group’s Export Competition, Canada’s Market Access, DCs’ SDT and Development Box, US’ Agricultural Trade Reform and Domestic Reform	28 (11.07.00)
Mauritius	Comments on Framework for Negotiations	28/Add.1 (18.07.00)
New Zealand	Introduction of Cairns Group Proposal on Export Competition	29 (11.07.00)
Norway	Comments on Secretariat Papers	30 (11.07.00)
Thailand	Comments on SDT of DCs	31 (11.07.00)
United States	Comprehensive Long-Term Agricultural Trade Reform	32 (12.07.00)
India	<i>Comments on Framework for Negotiations, Presentation and Consideration of Proposals</i>	33 (13.07.00)
European Communities	Export Competition	34 (18.09.00)
Cairns Group	Domestic Support	35 (22.09.00)
NTC Group ^d	Non-Trade Concerns	36 (22.09.00)
NTC group	Non-Trade Concerns	36 /Rev.1 (09.11.00)
Developing Countries Group	Market Access	37 (28.09.00)
Latin America ^c	Export Subsidies – Food Security or Food Dependency ?	38 (27.09.00)
Cairns Group	Market Access	54 (10.11.00)
ASEAN	Special and Differential Treatment for DCs	55 (10.11.00)
Transition Economies ^f	Domestic Support – Additional Flexibility for Transition Economies	56 (14.11.00)
Transition Economies	Market Access	57 (14.11.00)
United States	Proposal for Tariff Rate Quota Reform	58 (14.11.00)

NOTES

^a Cairns Group (Papers 11 and 35): Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand and Uruguay.

^b Developing Countries Group 1 (Papers 13 and 14): Cuba, Dominican Republic, Honduras, Pakistan, Haiti, Nicaragua, Kenya, Uganda, Zimbabwe, Sri Lanka and El Salvador.

^c Developing Countries Group 2 (Paper 37): Cuba, Dominican Republic, El Salvador, Honduras, Kenya, India, Nigeria, Pakistan, Sri Lanka, Uganda and Zimbabwe.

^d NTC Group (Paper 36): Barbados, Burundi, Cyprus, Czech Republic, Estonia, European Communities, Fiji, Iceland, Israel, Japan, Korea, Latvia, Liechtenstein, Malta, Mauritius, Mongolia, Norway, Poland, Romania, Saint Lucia, Slovak Republic, Slovenia, Switzerland and Trinidad & Tobago.

^e Latin America: Argentina, Brazil, Paraguay and Uruguay (MERCOSUR), Chile, Bolivia and Costa Rica.

^f Transition Economies: Albania, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Kyrgyz Republic, Latvia, Lithuania, Mongolia, Slovak Republic and Slovenia.

Annex B**Background papers prepared by the WTO secretariat and issued as of 17 November 2000**

Title of paper	Number & date G/AG/NG
Domestic Support	S/1 (13.04.00)
Domestic Support – Corrigendum	S/1/Corr.1 (25.04.00)
Green Box Measures	S/2 (19.04.00)
Implementation of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Less-Developed and Net Food-Importing Developing Countries	S/3 (25.04.00)
Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Less-Developed and Net Food-Importing Developing Countries.	S/4 (27.04.00)
Export Subsidies	S/5 (11.05.00)
Agricultural Trade Performance by Developing Countries, 1990-1998	S/6 (23.05.00)
Tariff and Other Quotas	S/7 (23.05.00)
Tariff Quota Administration Methods and Tariff Quota Fill	S/8 (26.05.00)
Special Agricultural Safeguard	S/9 (06.06.00)
Tariff Information on Agricultural Products	S/10 (07.06.00)
Potential Uses of the Integrated Data Base and the Consolidated Tariff Schedules Database	S/10/Add.1 (15.09.00)
Effects of the Reduction Commitments on World Trade in Agriculture	S/11 (09.06.00)
Statistical Data for All Members with Respect to World Market Shares in Agricultural Products as Listed in the Agreement on Agriculture; Sum of Exports and Imports of Agricultural Products, Agricultural Trade Balance	S/11/Add.1 (24.07.00)
Export Performance of Developing Countries in Respect of Agricultural Products as Listed in the Agreement on Agriculture; Statistical Data on their Export Performance re total Agricultural Products that Compete with Develop	S/11/Add.2 (15.09.00)
Country Exports; Primary and Value-Added Agricultural Products Members' Usage of Domestic Support Categories, Export Subsidies, and Export Credits	S/12 (15.06.00)
Export Credits and Related Facilities	S/12/Add.1 (27.06.00)
Tariff Information on Agricultural Products and Markets of Interest to Developing Countries	S/13 (26.06.00)
Agricultural Products and Markets of Interest to Developing Countries	S/14 (15.09.00)
Agricultural Production Values	S/15 (19.09.00)

REFERENCES

- ACP (2000) : Memorandum on the Economic Factors that should be taken into Account by the European Union when Setting the range within which the ACP Guaranteed prices for the 2001/2002 Delivery Period are to be negotiated, ACP/63/056/00, ACP Secretariat, Brussels.
- Global Alliance (1999), Communiqué of Global Alliance for Sugar Trade Reform and Liberalization, issued in Seattle, United States, November, Brisbane, Australia.
- International Sugar Organization (ISO) (2000) : Developing Country Perspectives on the 1994 GATT Uruguay Round Agreement on Agriculture and the World Sugar Market, Market Evaluation Consumption and Statistics Committee, International Sugar Organization, April, London.

IV. THE COTONOU AGREEMENT AND THE VALUE OF PREFERENCES IN AGRICULTURAL MARKETS FOR AFRICAN ACP STATES

Introduction

The present chapter is an update of one part of a study prepared for UNCTAD in November 1999 by Tangermann and Josling (1999). That 1999 study looked into the interests of developing countries in the new round of WTO negotiations on agriculture. Among the many issues covered in the study, preferential treatment of developing country exports in agriculture was also discussed. To illustrate the quantitative significance of preferential treatment, Part II of the study analysed the trade preferences in agriculture granted by the EU to one particular sub-group of the African, Caribbean and Pacific (ACP) countries, namely the African ACP countries (AACP). At the time, this case study was based on the preferences granted by the EU under the Lomé IV Convention, at that time still in force.

Meanwhile, negotiations on the successor agreement to the Lomé Convention between the ACP countries and the EU were concluded in February 2000, and the new agreement was signed in Cotonou, Benin, in June 2000. Like Lomé IV, the new Cotonou Agreement contains, among others, trade preferences for the ACP countries. However, some changes were made to the structure of preferences. The limited purpose of the present study, is to update the quantitative analysis presented in Part II of our 1999 study and, to see how the results obtained then have changed as a result of the new EU-ACP Agreement. As in Part II of the original paper, the quantitative analysis provided here is limited to agricultural exports from the AACP countries to the EU.

Section 2 of the present study provides a brief overview of how the trade arrangements under the Cotonou Agreement differ from those under Lomé IV. Section 3 then repeats most of the text of Part II of our 1999 study, though with additions discussing the changes resulting from Cotonou. Section 4 provides a summary and draws some conclusions.

A. Trade Arrangements under Lomé IV and Cotonou: A Brief Comparison

One major issue to be considered by the ACP countries and the EU in agreeing on future trade arrangements was the fact that the unilateral trade preferences for ACP countries extended by the EU under the Lomé Convention were not consistent with WTO rules, because they were neither (i) extended to all developing countries, nor could they (ii) be considered to fall under WTO rules for regional free trade arrangements because they were not reciprocal, i.e. did not include reverse preferences for imports from the EU extended by the ACP countries. The ACP countries and the EU, thus, needed a WTO waiver allowing it to maintain the Lomé trade arrangements on a temporary basis. The last WTO waiver expired, like the Lomé IV Convention, at the end of February 2000.

In the negotiations between the ACP countries and the EU, attempts were made to find a solution that was WTO compatible. In the end, these attempts failed in the sense that a completely new and WTO compatible framework, substituting for the Lomé trade arrangements already in 2000, could not yet be agreed. The trade arrangements under the Cotonou Agreement, are of a temporary nature again, but outline the path towards a new future trading regime between the ACP countries and the EU which is hoped to establish conditions which will eventually be WTO compatible. During this adjustment period, scheduled to last until 2008 at the latest, the ACP countries and the EU will need another WTO waiver for the arrangements established under the Cotonou Agreement. The EU, and

United Republic of Tanzania and Jamaica on behalf of the ACP countries, approached the WTO about a new waiver in March 2000.¹¹

However, at the time of writing a decision on that waiver has not yet been taken by the WTO. The Cotonou Agreement provides that during the duration of its temporary trade arrangements, i.e. before 2008, the EU and the ACP countries intend to negotiate a new regime that will be WTO compatible. The new arrangements shall be introduced gradually, during a preparatory period. The new arrangements will come in essentially two forms. First, new economic partnership agreements (EPA) will be negotiated which aim at a progressive removal of trade barriers between the EU and the ACP. It is intended that the EPA will establish reciprocal free trade between the EU and the ACP in line with WTO rules on regional free trade arrangements. Negotiations on these EPAs, to start in September 2002, “will be undertaken with ACP countries which consider themselves in a position to do so”¹², i.e. not necessarily with all ACP countries. The intention is to establish the new EPA with all ACP countries which are not least-developed countries (LDC).¹³

Hence, the second element of the trading arrangements foreseen in the Cotonou Agreement relates to the LDCs. In this regard, the EU has committed itself to “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”.¹⁴ In other words, this second part of the future trade arrangements will seek to avoid the problem of WTO consistency by extending unilateral EU trade preferences to all LDCs, including those that are not members of the ACP group (at this time there are nine LDCs on the UN list that are not ACP countries).¹⁵ Meanwhile in September 2000 the EU Commission tabled a proposal dubbed the “Everything but Arms” (EBA) Initiative. Under this arrangement, if accepted by the EU Council of Ministers, the EU would provide duty-free access to EU markets for nearly all goods to all 48 LDCs on the list of the United Nations.¹⁶ Duty-free access would not be provided for arms (25 tariff lines). For three agricultural products (bananas, sugar and rice), the initiative would be implemented in three progressive steps within three years.

Until these two new types of preferential trade arrangements (EPA with ACP States, and EBA for all LDCs, including the ACP LDCs) enter into force, the Cotonou Agreement provides that specific unilateral EU preferences for the ACP countries continue to be applied, very much along the lines of the trade preferences under Lomé IV.¹⁷ All industrial exports from the ACP countries continue to enter the EU duty-free. For agricultural products, some amendments of the Lomé IV preferences products were agreed. These amendments come in the form of several additional tariff lines for which preferences have now been granted which did not exist under Lomé IV. However, for those

¹¹ WTO document G/C/W/187, 2 March 2000.

¹² Cotonou Agreement, Article 37:5. The Agreement is available on the website of the EU Commission, at http://www.europa.eu.int/comm/development/cotonou/overview_en.htm

¹³ The Cotonou Agreement also provides that in 2004 the EU “will assess the situation of the non-LDC 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).

¹⁴ Cotonou Agreement, Article 37:9. This provision of the Agreement also foresees that the new regime for LDC “will simplify and review the rules of origin, including cumulation provisions that apply to [LDC] exports”.

¹⁵ Unilateral trade preferences extended by developed countries to the LDCs (but not, in the same form to other developing countries) are WTO legal under paragraph 2 (d) of the 1979 Enabling Clause, allowing for “special treatment of the least developed among the developing countries in the context of any general or specific measures in favour of developing countries”. (GATT, BISD, 26th Supplement, p. 203, Geneva, March 1980).

¹⁶ For a summary of the “everything but arms” initiative, see the EU Commission’s website, <http://www.europa.eu.int/comm/trade/miti/devel/eba.htm>.

¹⁷ The respective text in the Cotonou Agreement (Article 36:3) provides that “in order to facilitate the transition to the new trading arrangements, the non-reciprocal trade preferences applied under the Fourth ACP-EC Convention shall be maintained during the preparatory period for all ACP countries, under the conditions defined in Annex V to this Agreement”.

agricultural tariff lines where preferences had already been granted under Lomé IV, no changes were made. In particular, preferential tariffs for these products were not reduced, nor were quotas extended where preferences used to be limited to given tariff rate quotas. Further details are provided below in Section 3.

The special preferences for sugar and beef extended to selected ACP countries under Lomé also remain in force. The banana Protocol attached to Lomé IV was not renewed, as the EU is currently in the process of establishing a new banana regime.¹⁸ Regarding the future of the arrangements for sugar, beef and bananas, it was agreed that they will need to be reviewed in the context of the new trading arrangements, and with a view to their compatibility with WTO rules.¹⁹ What this will mean in practice is not yet clear.

B. The Value of Preferences in Agricultural Markets for the African ACP States

The Quantitative Importance of Lomé Agricultural Preferences

The question addressed in this section is how important, in quantitative terms, are the economic benefits resulting from the preferences extended to the AACP by the EU in the area of agriculture, and how does the Cotonou Agreement compare in this regard to the preferences granted under Lomé IV?²⁰

Product Coverage

The EU market for agricultural exports from the AACP, based on trade statistics for 1997, is an important outlet for those countries (Table 1).²¹ On aggregate, 24.2 per cent of all AACP exports go to the EU. For agriculture the EU market is more important than for overall exports, with more than one third (35.4 per cent) of all AACP agricultural exports going to the EU. This is reflected in the fact that the agricultural share in exports to the EU (29.4 per cent), is larger than the agricultural content of AACP exports to the world (20.1 per cent). For the non-African ACP countries (from the Caribbean and Pacific), the situation is similar: just under a fifth (18.9 per cent) of their exports go to the EU, but the EU market takes almost a third (31.6 per cent) of their agricultural exports. For these countries the proportion of agricultural trade in total exports is higher than in the AACP (30.7 per cent), and their exports to the EU have an even higher agricultural content (51.1 per cent).

¹⁸ The respective text in the EU's request for a WTO waiver of March 2000 says that "there is now a second banana protocol [attached to Annex V of the Cotonou Agreement], which does not provide for trade preferences for bananas. Bananas' preferential treatment results from Article 1 of Annex V of the [Cotonou Agreement]. Preferential access for bananas shall be granted in accordance with the general principles of the [Cotonou Agreement] in the context of the Community's new banana import regime."

¹⁹ The respective text in the Cotonou Agreement (Article 36:4) is "In this context, the Parties 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 We are grateful to Thomas Knapp for research assistance provided in data collection, data analysis and estimation of preference margins.

²¹ 1997 was the most recent year for which annual (as opposed to monthly) EU trade data were available at the time our original 1999 study was done.

Table 1
The EU as a market for ACP exports, 1997

	Exports to EU as % of exports to world	Agricultural Exports to EU as % of agricultural exports to world	Agricultural Exports to world as % of all exports to world	Agricultural. Exports to EU as % of all exports to EU
All African ACP	24.2	35.4	20.1	29.4
All other ACP	24.0	36.4	33.7	51.1

Sources: Eurostat (various issues) for exports to EU; FAOSTAT (1999) for exports to world.

Note: These two statistical sources are not fully comparable and hence ratios between EU and world exports should be interpreted with care.

The agricultural preferences under the Lomé Convention, and now under the Cotonou Agreement, come in various forms. Three products receiving particular forms of preferences are covered by specific regulations in Protocols or provisions (bananas, beef and sugar; these products will be referred to as Protocol products),²² while the remaining tariff preferences are specified in lists annexed to the Lomé Convention and the Cotonou Agreement.²³ In the latter category (the non-protocol products), preferences usually take the form of preferential tariffs set at a given percentage of the MFN tariffs applied at the time. In some cases where the EU applies specific tariffs, for example in the cereals sector, preferences are specified as given absolute reductions in the MFN tariffs. In any case, agricultural preferences are specified by tariff line, and hence preferential treatment of EU imports from the ACP countries does not cover all agricultural products. In all these regards there was no change under the Cotonou Agreement, compared with the Lomé arrangements.

A significant improvement brought about by Cotonou is that the number of tariff lines included in the list of agricultural preferences has increased noticeably. As shown in the last line of Table 2, the total number of tariff lines on the list of agricultural preferences has increased from 1669 under Lomé IV to 2209 under Cotonou, i.e. by 32 per cent.²⁴

²² Under the Lomé Convention, rum also belonged to the Protocol products. However, as the EU's MFN tariffs on rum products are now zero anyhow, there is no longer a point in considering tariff preferences for rum. Thus, the Cotonou Agreement no longer has a rum Protocol, and rum is also not listed on the list of tariff preferences.

²³ After the Uruguay Round, when the EU had adjusted its agricultural import regime to the requirements of tariffication, the agricultural preferences under Lomé were also adjusted to the new situation.

²⁴ One needs to be careful in assessing the addition of new products to the list of agricultural preferences. Some seemingly new agricultural products on the Cotonou list indeed used to receive (zero tariff) preferences already under Lomé IV. However, under Lomé IV these products came under the category of industrial products, all of which can be exported from the ACP to the EU duty-free anyhow and hence are not compiled in a specific list. Under Cotonou, however, some products earlier treated as industrial products now turn up on the list of agricultural products, again with zero preferential duties. An example of this kind are some cotton products. Such reclassified products are not included in the number of preferential tariff lines shown in Table 2.

Table 2
 Tariff Lines Covered by ACP Preferences: Selected Groups of Agricultural Products
 Exported from the AACP to the EU (1997 Trade Data)

Product group	Lomé IV		Cotonou	
	Number of tariff lines covered	Lines which exported to EU from AACP	Number of tariff lines covered	Lines which exported to EU from AACP
Fish	373	204	373	204
Tobacco	21	19	33	25
Fresh fruit and vegetables	135	57	176	67
Processed fruit and vegetables	393	119	422	137
Cereals	23	7	25	7
Dairy products	162	3	174	3
Subtotal	1,107	409	1,203	443
Remaining products	562	93	1,006	222
Total of above products	1,669	502	2,209	665

Source: Authors' calculations based on Eurostat (various issues); Official Journal of the European Communities (various issues). For detail, see Annex tables.

In our original 1999 study, some groups of agricultural products had been selected for more detailed analysis, on grounds explained below. These product groups are listed in the upper part of Table 2. In these selected product groups, some additional tariff lines have also been added. Among these product groups, expansion of the number of tariff lines covered by preferences under Cotonou was largest for fruit and vegetables, both fresh and processed. In the product groups considered particularly sensitive in the EU, and belonging to the 'core' products under the Common Agricultural Products, only very few tariff lines were added to the list of preferences (two new tariff lines in the cereals group, and twelve more tariff lines in the group of dairy products). However, a larger number of new tariff lines was added to the agricultural products not specifically covered in our 1999 study. For products actually exported to the EU from the AACP, the increase due to Cotonou in the number of tariff lines covered by preferences was roughly in proportion with the expansion of preferences for the ACP countries on aggregate, from 502 to 665, i.e. also by 32 per cent.

Those preferences where tariffs are reduced to zero are particularly valuable. The proportion of the tariff lines with these zero preferential tariffs has increased from about one half on the list of agricultural preferences under Lomé IV to about two thirds under Cotonou. In other words, a particularly large share of the tariff lines added to the list of agricultural preferences under Cotonou exhibits zero duties. At the same time, among the agricultural products newly added to the list of preferences, only relatively few have preferential tariffs that are limited to given quantities (TRQs). As a result, the share of quantity-restricted tariff preferences in agriculture has declined from 11 per cent under Lomé IV to 8 per cent under Cotonou.

While the number of tariff lines with preferences is one useful indicator of the extent by which preferential treatment is granted, preference coverage, defined as the share of total exports benefiting from preferences, is an even better indicator, providing information on the economic significance of preferential treatment. Coverage of preferences was estimated by matching disaggregated EU imports with the list of Lomé and Cotonou preferences by tariff line. AACP exports of all (non-protocol) agricultural products benefiting from some form of preference are then expressed as a percentage of all agricultural exports and of overall AACP exports to the EU. The results of these calculations,

based on trade values for 1997, are presented in Table 3. Under Lomé IV, slightly more than two-fifths (40.3 per cent) of all AACP agricultural exports to the EU consisted of products included in the list of preferences. In this respect, Lomé preferences were already an important factor in AACP agricultural exports to the EU. For the non-African ACP, product coverage under Lomé in terms of their non-protocol agricultural exports to the EU was considerably lower, at about one quarter (24.6 per cent). Relative to all AACP exports to the EU, products listed under Lomé preferences covered nearly 12 per cent. Given the larger share of agriculture in their exports to the EU, product coverage of (non-protocol) agricultural preferences was a slightly larger part (12.6 per cent) of total exports to the EU for the non-African ACP.

Inclusion of a large number of new products in the list of agricultural preferences under Cotonou has significantly expanded product coverage.²⁵ Nearly three quarters of AACP agricultural exports to the EU are now covered by preferences, and coverage for the remaining ACP countries has increased to 45 per cent. In other words, Cotonou has brought about a significant improvement of preferences also in terms of product coverage in agriculture.

Table 3
Product Coverage of the (non-Protocol) Agricultural Preferences Under Lomé and Cotonou (1997 Trade Data)

	Lomé		Cotonou	
	African ACP	Non-African ACP	African ACP	Non-African ACP
Products with zero MFN tariffs included				
Preferential exports as % of agric. exports to EU	40.3	24.6	74.9	45.4
Preferential exports as % of all exports to EU	11.9	12.6	22.0	23.3
Products with zero MFN tariffs excluded				
Preferential exports as % of agric. exports to EU	35.7	12.1	69.3	33.2
Preferential exports as % of all exports to EU	10.5	6.2	20.4	17.0

Sources: Authors' calculations, based on Eurostat (various issues); Official Journal of the European Communities (various issues).

The list of Lomé preferences contained several products for which MFN tariffs of the EU are zero anyhow, so that any "preference" (in the form of duty-free access to the EU in these cases) is completely irrelevant for the products concerned. Oilseeds are a case in point, and some fish products, nuts and a number of products made from fruit and vegetables also belong in that category. For the AACP, these products with "empty preferences" made up for nearly one eighth of all agricultural exports to the EU covered by the list of Lomé preferences. Hence, product coverage of Lomé preferences, adjusted for "empty preferences" was less, namely 35.7 per cent rather than 40.3 per cent of agricultural exports to the EU, and 10.5 per cent rather than 11.9 per cent of total exports to the EU (see Table 3). For the non-African ACP, "empty preferences" were a much more significant factor. Taking this into account, product coverage under Lomé was reduced to slightly less than half of what it appeared to be on the surface, to 12.1 per cent of agricultural exports to the EU and 6.2 per cent of total exports to the EU.

²⁵ All tariff lines that had been classified as industrial products under the Lomé regime and are now regrouped as agricultural products are not contained in this calculation of product coverage.

The Cotonou Agreement has not only maintained that feature, but actually added even more “empty” preferences to the list (in addition to the products classified as industrial under Lomé and now included in the agricultural list). Coconuts are one example of a new “empty” preference under Cotonou. However, as a proportion of the overall number of preferential tariff lines the phenomenon of “empty” preferences has decreased under Cotonou.

It should be noted that for individual countries among the AACP, product coverage of Lomé preferences varied considerably from the average for the whole group. If products with zero MFN tariffs in the EU are excluded, product coverage of Lomé preferences in terms of share in agricultural exports to the EU varied between 0 per cent (Liberia and Rwanda) and 100 per cent (Lesotho) under Lomé treatment. In the case of Liberia, agricultural products played an insignificant role in exports to the EU (0.2 per cent) and made up for only a small share in exports to all countries (9.6 per cent). Hence, low product coverage of the Lomé preferences was probably not a major problem for Liberia. In the case of Rwanda, on the other hand, agricultural products play a significant role in exports to the EU (44.9 per cent). In such cases, low product coverage could potentially be a problem. A closer look at the Cotonou preferences at this level of country disaggregation reveals some differences. Product coverage increased on aggregate for all AACP countries. But this is not the case for each individual AACP country. Lesotho maintained the 100 per cent share it had under Cotonou. Liberia, with its starting point of zero per cent under Lomé, benefited significantly from the additional new preferences and now exhibits a preference coverage of 75.4 per cent under Cotonou. Rwanda, on the other hand, continues to derive nearly no benefit from the Cotonou preferences as its product coverage stays at close to 0 per cent.

However low product coverage can reflect various factors that can only be identified through a detailed analysis of the commodity structure of the respective countries’ exports to the EU (which is not attempted here). It can result from a pattern of exports to the EU that concentrates on products that enter the EU duty-free anyhow and are therefore (normally, but see above) not candidates for preferential treatment. It can also reflect a situation in which the exporting country concerned is so competitive in products not receiving preferences in the EU that there is no “need” for preferences. But it can also be indicative of a product composition of Lomé preferences that simply does not match the export interests of the ACP country concerned.

The Protocol products are a specific category not only because of the special rules governing preferences in those cases, but also because of their concentration on individual exporting countries. Hence, the share of these products in all agricultural exports from a group of ACP countries to the EU provides information of only limited use. Therefore Table 4, showing the coverage of Protocol products, also provides information on the importance of these products for EU exports from those individual ACP countries that are most dependent on them. Bananas, beef and sugar are important elements of the ACP preferences not only because of their large significance for total exports of the ACP countries concerned but also because of the high levels of EU tariffs for these products (and the restrictive tariff rate quotas in the case of bananas). In this regard, Cotonou did not bring any changes.

Table 4
Share of Protocol Products in Total ACP Agricultural Exports to the EU
(1997 Trade Data)

	All African ACP		All other ACP	
	All exporting countries	Country with the highest share	All exporting countries	Country with the highest share
Bananas	2.9%	50.0% (Somalia)	3.1%	96.4% (St. Vincent)
Beef	1.9%	98.1% (Botswana)	0.1%	19.0% (Antigua and Barbuda)
Sugar	4.1%	83.4% (Mauritius)	5.2%	98.2% (St. Christopher)
Total Protocol products	10.8%		8.4%	

Sources: Authors' calculations, based on Eurostat (various issues); Official Journal of the European Communities (various issues)

Percentages for "country with highest share" are per cent of that country's total agricultural exports to the EU. Note that exports of Protocol products are included in the base here, and hence the denominator for these figures is different from that in Table 2.

The Value of Preference Margins

The importance of any given set of trade preferences for the exporting countries is determined not only by their product coverage, but also by the size of the preference margin. The value of preferences is a reflection of the preference margin and the amount of trade. For a given product the preference margin is the difference between the full MFN duty and the preferential duty. These preference margins resulting from the ACP arrangements for agricultural products have been calculated here for selected groups of agricultural products benefiting from preferential treatment for the aggregate of all AACP countries. Calculation of preference margins is complicated by the nature of the data. Trade statistics have to be combined with tariff information at a very disaggregate level (because preferences are defined at that disaggregate level), and any quantitative limitations to the preferences granted by the EU also have to be taken into account. Because of the limited scope of this study, only a subset of all agricultural products covered by ACP preferences could be included in this type of calculation. Therefore, rather than providing comprehensive information, the results presented are intended to serve as an illustration of the orders of magnitude involved.

The illustrative products chosen for the calculation of preference margins fall into three categories.

First, products were included that have a high share in AACP agricultural exports to the EU and are therefore particularly important for the AACP. In this category are fresh fruit and vegetables (4.8 per cent of 1997 AACP agricultural exports to the EU, inclusive of Protocol products), processed fruit and vegetables (1.6 per cent), tobacco (7.5 per cent), and fish (18.5 per cent). Fish, though not usually classed as an agricultural product, has been included in this calculation because of the large importance of fish exports from the AACP to the EU. Second, some of those agricultural products were chosen that are particularly sensitive for the EU because they are in the "core" of CAP and/or enjoy particularly high rates of protection. In this category are cereals (0.1 per cent of 1997 AACP agricultural exports to the EU) and dairy products (0.1 per cent). Third, the two Protocol products that also belong to the "core" of the CAP were included in the analysis, i.e. beef (3.9 per cent of 1997 AACP agricultural exports to the EU) and sugar (4.5 per cent).²⁶ Overall, the products included in this estimate of preference margins cover 40.8 per cent of AACP agricultural exports to the EU.

As the Cotonou Agreement brought a significant expansion of the number of tariff lines, covered by preferences, and hence of the value of ACP agricultural exports benefiting from preferences, it was

²⁶ In the cases of both beef and sugar, there are general Lomé preferences in addition to the Protocol preferences. The percentages given here include those general preferences.

considered necessary in this update to go beyond this set of selected product groups, so to see whether there was any significant increase in the preference margin for products that had earlier remained outside the analysis. For this reason, the present update also includes the category of 'remaining' products, i.e. all other agricultural products included in the list of preferences. In other words, the calculations now cover all agricultural products for which the Cotonou Agreement provides tariff preferences. To make it possible to compare the Cotonou situation with that under Lomé, all agricultural products that had not yet been included in the analysis in our 1999 study have now also been included in the estimate of the Lomé preference margin, so that the estimates for both agreements now cover all agricultural products included in a comprehensive fashion.

The calculations presented here are based on trade data (values, quantities and unit values) for 1997. The tariffs (MFN and preferential) used in the calculations are those that the EU applied in the first half of 1999. These tariffs were used in the calculations to provide available up-to date information on trade policy. Trade data for 1999 as well, but they were not available at the time of writing the original study (October 1999). Hence, the most recent trade data available were used, i.e. those for 1997.²⁷ The results presented here should, therefore, be interpreted as showing those preference margins that would have existed in 1997 had the EU used 1999 tariffs in that year, with given trade quantities and values. Where the EU's ACP preferences are limited to given quantities, only AACP exports within these limits have been included in the estimate.²⁸ In effect, this means that it was assumed that the African ACP countries could potentially use the whole volume of preferential quotas, though in reality some of the quotas may also be used by non-African ACP countries. As the preferential ACP quotas for most agricultural products (as opposed to quotas for the Protocol products) are not allocated to country of origin, and as there is no statistical information on which exporting countries exported within the preferential quotas (where there was full use of the quotas), no more accurate calculation could be made. Detailed results of the calculation of preference margins for all individual tariff lines for the Lomé preferences were presented in the Annex tables of the original 1999 study (contained in a separate volume). In the following text, only aggregate results showing the value of preferences are summarized.

The value of the preference margins for the product groups covered here is shown in Table 5. For the aggregate of all non-Protocol agricultural products, under Lomé IV the value of the preference margin was 280.6 million ECU, equivalent to 13.9 per cent of the value of AACP exports to the EU of the products concerned. Under Cotonou, inclusion of several new tariff lines in the set of agricultural preferences has raised the value of the preference margin considerably. For all agricultural products on aggregate, the overall preference margin has increased from 280.6 to 407.6 million ECU, i.e. by 45.3 per cent. Most of this increase occurred in the group of 'remaining' products, i.e. those not covered in our original 1999 study. The largest shares of the additional preference margin for these 'remaining' products is for preparations of fish and molluscs (78.3 million ECU), cocoa and cocoa products (30.3 million ECU), and preparations of fruit and vegetables (4.6 million ECU).

It now appears that these products indeed did not contribute much to the overall preference margin under Lomé (no more than 11.3 million ECU). However, with the addition of many new tariff lines these 'remaining' products now attract a large aggregate preference margin under Cotonou. Among the selected product groups covered in the original study, the sector of processed fruit and vegetables benefited most from the addition of new tariff lines. For the sensitive groups of cereals and dairy products, the preference margin enjoyed by the AACP has not increased at all, as the few newly added products in these groups are not exported to the EU by the AACP (see Table 2).

²⁷ The same 1997 trade data and 1999 MFN tariffs are also used now for assessing the preferences extended under the Cotonou Agreement, in order to maintain a consistent basis of comparison. If the Cotonou preferences had been evaluated on the basis of more recent trade and MFN tariff data, it would have been impossible to tell whether any change in preference margins estimated, compared with Lomé IV preferences, is due to a change in trade and MFN tariff data used or to changes in the structure of trade preferences.

²⁸ The Annex tables contain information on the preferential quotas where they exist for the products included here. They also show the quantities actually imported into the EU from the AACP, and therefore provide some information on the extent to which the quotas have been filled by the AACP.

Table 5
Preference Margins for Agricultural Products Exported from the AACP to the EU Under Preferential Provisions, 1999 MFN Tariffs (1997 Trade Data)

Product group	Value of preference margin			
	Lomé		Cotonou	
	Million ECU	% of value of AACP export to EU of products concerned	Million ECU	% of value of AACP export to EU of products concerned
Fish	156.8	13.3	156.8	13.3
Tobacco	68.0	14.2	68.4	14.2
Fresh fruit and vegetables	22.7	7.3	22.8	7.0
Processed fruit and vegetables	20.5	20.6	23.3	18.9
Cereals	0.0	0.5	0.0	0.5
Dairy products	1.3	28.3	1.3	28.3
Subtotal	269.3	14.2	272.6	12.1
Remaining products	11.3	7.4	135.0	6.1
All agricultural products	280.6	13.9	407.6	10.1

Source: Authors' calculations based on Eurostat (various issues); Official Journal of the European Communities (various issues). For detail, see Annex tables.

It should be noted that estimates of preference margins like those presented here can only show the upper bound of the actual economic value of the preference margin for the exporting countries concerned. It would accrue at that level to the AACP only if prices on the EU market of the products concerned are at the level of world market prices plus MFN tariff. This is not necessarily the case for all products, as in some cases there may be no imports at MFN tariffs because domestic EU production is sufficiently large to keep the domestic EU price down at a level which makes imports at MFN tariffs unprofitable. Where that is the case the actual benefit of the preference to the AACP is less than the preference margin calculated here.

In addition, the share of the preference in the value of AACP exports to the EU in the products concerned differs noticeably among product groups. For dairy products it is as high as 28 per cent, while for cereals it is no more than one half of one per cent. The low relative preference margin in the cereals sector is due to the fact that "preferential" ACP tariffs in that sector are only marginally below the MFN tariffs for most of the individual products concerned, in particular for the two cereals that have the highest weight among AACP cereal exports to the EU (sweet corn and maize). The one cereal where the preference margin is somewhat larger (grain sorghum) is exported to the EU in only marginal quantities. Overall, cereal exports from the AACP to the EU are rather small. ACP preferences for dairy products are much larger in percentage terms, but then the total amount of these products exported to the EU is also very small indeed (less than 2000 tons). Because of the marginal volume of AACP exports to the EU in these two product groups, the absolute value of the preference margin for them is also rather small, only slightly above one million ECU.

While preferences for the non-Protocol products are available for all ACP countries, the preferences for the Protocol products are available only to specified ACP countries, in quantities strictly limited and set for each individual country of origin. Only beef and sugar are included in this quantitative analysis.²⁹ For both of these products, in addition to the Protocol preferences there are

²⁹Rum preferences are no longer relevant because of zero MFN tariffs in the EU. The value of the banana preferences very much depends on the parameters of the overall market regime for bananas in the EU, which is not attempted in the limited analysis offered here.

also general preferences available to all ACP countries. In the case of beef, these general preferences take the form of a reduction to zero of the *ad valorem* component of the EU MFN tariff, while the Protocol preference reduces the (much larger) specific tariff by 92 per cent. In the case of sugar, some sugar products (sugar cane, artificial honey, sugar syrups, and molasses) enjoy a slight reduction of the specific tariff charged on MFN imports. Under the sugar Protocol, on the other hand, the EU buys given quantities of sugar from a specified group of ACP countries at essentially the domestic EU intervention price. In this latter case, the value of the “preference” is equivalent to the difference between the EU intervention price and the world market price (at which the ACP countries concerned would otherwise have to sell that sugar).³⁰

Table 6

Preference Margins for Beef and Sugar Exported from the AACP to the EU Under ACP Provisions, 1999 MFN Tariffs (1997 Trade Data)

Product	Value of preference margin	
	Million ECU	% of value of AACP export to EU of products concerned
Beef: general ACP preferences	17.0	13.7
Beef: Protocol preferences	87.1	75.2
Beef: total preferences	104.1	43.2
Sugar: general ACP preferences	1.0	4.8
Sugar: Protocol preferences	256.5	56.7
Sugar: total preferences	257.6	55.6
Total of above preferences	361.7	52.7

Source: Authors' calculations based on Eurostat (various issues); Official Journal of the European Communities (various issues). For detail, see Annex tables.

The preference margins (including the price advantage on Protocol sugar) resulting from these Protocol arrangements are sizeable, both in absolute terms and compared with preference margins resulting from ACP preferences for other agricultural products. As shown in Table 6, the preference margin for Protocol beef is close to 90 million ECU, and the margin for Protocol sugar from the African ACP countries concerned is above 250 million ECU.³¹ Including the general ACP preferences, the aggregate value of preferential treatment in these two sectors is around 360 million ECU. For these two Protocol products, the preference margins also represent very large shares of the export revenues concerned, i.e. 75 per cent in the case of beef and 57 per cent in the case of sugar. For these Protocol products, no changes relative to Lomé IV were made under the Cotonou Agreement, neither to the specific Protocol preferences nor to the general ACP preferences.

³⁰ In the calculation of the preference margin for Protocol sugar, the New York exchange price has been used as an indicator of the world market price, and the margin has been calculated as the difference between the EU intervention price and that price.

³¹ For both Protocol beef and sugar, the preference margins have been calculated here on the basis of actual export quantities in 1997, rather than based on the quota volumes agreed. In the case of beef, only around two thirds of the preferential quota were used in 1997. Less than full use of that quota is not a new phenomenon (McQueen et al., 1998, p. 142). In the case of sugar, actual 1997 exports from the AACP to the EU were above the quota, due to quota transfers among the ACP countries.

Table 7

Preference Margins for Protocol Beef and Sugar Exported from Individual AACP States to the EU Under ACP Provisions, 1999 MFN Tariffs (1997 Trade Data)

Product and Country	Value of preference margin	
	Million ECU	% of value of total agr. export to EU of country concerned
Protocol Beef		
Botswana	38.4	88.5
Kenya	0	0
Madagascar	2.3	1.2
Namibia	21.9	13.0
Swaziland	1.1	0.8
Zimbabwe	23.4	5.5
Protocol Sugar		
Congo	4.1	28.0
Kenya	0	0
Madagascar	5.4	2.7
Malawi	11.0	5.3
Mauritius	168.8	46.6
Swaziland	63.3	48.9
United Republic of Tanzania	4.0	2.9
Uganda	0	0

Source: Authors' calculations based on Eurostat (various issues); Official Journal of the European Communities (various issues). For detail, see Annex tables.

Care should be taken when interpreting the preference margin for Protocol beef. The EU's MFN tariff for beef is prohibitive and contains a significant element of redundancy ('water in the tariff'). Reducing this tariff on a preferential basis, as is done under the ACP preference, to some extent does no more than eliminating the water from that tariff, without any direct benefit to the preferred exporter.³² Hence, in the case of beef, the general comment made above regarding the possibility that the actual value of a preference may be less than the difference between MFN tariff and preferential tariff is very relevant. To what extent the actual value of the preferences for Protocol beef is below the theoretical preference margin calculated here cannot be estimated in the absence of a more detailed quantitative study.

For some of the individual AACP countries concerned, the preference margins resulting from the Protocol products are an important factor in their earnings from agricultural exports to the EU, as shown in Table 7. For example, in the cases of both Mauritius and Swaziland, the preference margins implicit in their sugar exports to the EU account for close to one half of their total earnings from agricultural exports to the EU. For Botswana, the theoretical preference margin resulting from its beef exports to the EU is equivalent to nearly 90 per cent of the value of its agricultural exports to the EU. This reflects, on the one hand, the fact that (in 1997) Botswana's agricultural exports to the EU consisted nearly exclusively of beef. On the other hand, in the case of beef the theoretical preference margin, as calculated here, is a large part of the product value. However the actual value of the

³² Put differently, the EU's domestic market price is significantly below world price plus MFN tariff. Thus, AACP exporters, even if they had to pay no tariff at all, could not obtain a price for exports to the EU that is above exports to other destinations by the full rate of the EU's MFN tariff.

preference for Protocol beef is likely to be substantially below the preference margin as calculated here.

Reductions in Preferences due to WTO Tariff Cuts

The value of the preferences extended by the EU to the ACP countries, in the past under Lomé IV and now under Cotonou, will decline in the future with further reductions in the EU's MFN tariffs as they are likely to result from the next round of WTO negotiations. It is too early to say what tariff reductions may be agreed in the next round. However, it is conceivable that they could be as large as those negotiated in the Uruguay Round. In order to provide an estimate of what that would mean for the size of the preference margins enjoyed by the AACP, it has been assumed that the next round of WTO negotiations requires all countries to reduce their tariffs by another 36 per cent (using the same base). This would mean that tariffs would be no more than 28 per cent of the base tariffs from which reductions started in the Uruguay Round. The hypothesis is that the 36 per cent tariff reductions that were agreed in the Uruguay Round are repeated in the next round but without any option to reduce some tariffs by less than that rate. The assumption made is that in those commodities where countries reduced tariffs by less than the average rate of 36 per cent agreed in the Uruguay Round, they have to "catch up" in this round.

The preference margins that would then remain after the next WTO round are presented in Table 8.³³ Another round of such reductions in MFN tariffs would greatly reduce the value of the Lomé preferences for agricultural products. For most of the product groups covered here, the preference margin would decrease by 60 to 70 per cent of its 1999 value. These estimates strongly undermine the point often made that trade preferences for developing countries will tend to lose their value in the future as MFN tariffs are progressively reduced.

Table 8

Preference Margins for Selected Groups of Agricultural Products Exported from the AACP to the EU Under ACP Provisions, Hypothetical EU Tariffs After the Next WTO Round (1997 Trade Data)

Product group	Value of preference margin					
	Million ECU		% of value of AACP export to EU of product concerned		% decrease in preference margin relative to 1999 levels	
	Lomé	Cotonou	Lomé	Cotonou	Lomé	Cotonou
Fish	75.0	75.0	6.3	6.3	52.1	52.1
Tobacco	24.5	24.6	5.1	5.1	64.0	64.0
Fresh fruit and vegetables	8.9	9.0	2.9	2.8	69.8	60.6
Processed fruit and vegetables	6.2	8.8	6.2	7.1	61.9	62.1
Cereals	0.0	0.0	0.5	0.5	10.9	10.9
Dairy products	0.4	0.4	8.0	8.0	71.7	71.7
Total of above products	115.1	117.9	5.4	5.8	57.3	52.0

Source: Authors' calculations based on Eurostat (various issues); Official Journal of the European Communities (various issues). For detail, see Annex tables.

What will happen to preferences for beef and sugar when EU tariffs are further reduced in the next round of WTO negotiations? In both cases the extent of the general ACP preferences will decline as

³³ The hypothetical tariffs after the next WTO round are again applied to 1997 trade values, in order to maintain a consistent basis of comparison.

for all other products. In the case of Protocol beef, the preference is also defined relative to the EU's MFN tariff, and in the absence of any specific negotiations it would therefore appear that the size of that preference margin would also decline along with MFN tariffs. The lower preference margins that would result for these products if the EU's MFN tariffs were reduced to 28 per cent of their pre-Uruguay Round base levels are shown in Table 9. As in the cases of the other agricultural products considered above, the value of preference margins would then decrease by 60 to 70 per cent, and would thus also become of much less significance.

In the case of Protocol sugar, things are more complicated, as the preference in that case is not defined in terms of tariffs but results from the EU intervention price. With a large cut in the EU's sugar tariff the EU could not sustain its current intervention price. However, how much the EU would then have to cut its intervention price for sugar would depend on the level of the world market price for sugar prevailing at that time. Moreover, if the EU were to cut its intervention price for sugar (because of tariff reductions, or in the context of a 'voluntary' reform of its sugar regime) it would probably enter into negotiations with the ACP countries benefiting from the sugar Protocol, and might make compensation payments to them. For both reasons it makes little sense to engage in a mechanical calculation of how further reductions in the EU's MFN tariff on sugar would affect the preference margin for Protocol sugar. For this reason Protocol sugar has not been included in Table 9.

Table 9
Preference Margins for Beef and Sugar Exported from the AACP States to the EU Under ACP Provisions, Hypothetical EU Tariffs After the Next WTO Round (1997 Trade Data)

Product	Value of preference margin		
	Million ECU	% of value of AACP export to EU of products concerned	% decrease in preference margin relative to 1999 tariffs
Beef: general ACP preferences	6.9	5.5	59.6
Beef: Protocol preferences	32.1	27.7	63.2
Beef: aggregate preferences	39.0	16.2	62.6
Sugar products: general ACP preferences	0.3	1.6	67.6

Source: Authors' calculations based on Eurostat (various issues); Official Journal of the European Communities (various issues). For detail, see Annex tables.

Cotonou Preferences relative to EBA and GSP

Another key consideration is the comparison of Cotonou preferences with those available under the EU's GSP and the new set of (zero duty) preferences the EU intends to establish for the LDC under its "Everything but Arms" (EBA) initiative. Should the trade preferences under the Cotonou Agreement not receive WTO blessing in the form of a renewed waiver (unlikely as that is), at a time when the new trade regimes envisaged for the future in the Cotonou Agreement are not yet negotiated and established, then the ACP countries would fall back to GSP treatment by the EU. Moreover, for the LDC among the ACP countries, the improved EBA preferences now are a relatively likely expectation, and it is of interest to see how they would fare under that new regime. In this study, the current temporary Cotonou preferences have, therefore, been compared with the future EBA preferences and with those preferences that would apply should the AACP have to fall back to GSP treatment.

In order to assess this issue comprehensively all agricultural products for which the AACP receive preferences under Cotonou would need to be analyzed. As this could not be done within the scope of this study, the calculations are confined to the selected products chosen above to illustrate the

significance of the preferences. The analysis has to distinguish between the least developed AACP countries and the remaining AACP countries, as the GSP preferences the EU grants to the least developed countries are significantly more generous than those granted to other developing countries eligible for the EU's GSP. More important for assessing the perspectives of the Cotonou Agreement, the zero-duty preferences under EBA would apply only to the LDCs.³⁴

As shown in Table 10, for the aggregate of the selected product groups covered here, the preference margin for the LDC among the AACP, now under Cotonou 84.4 million ECU, will grow to 89.6 million ECU once the EU introduces the EBA as now proposed by the European Commission, i.e. by 6 per cent. In other words, EBA once introduced will not very much improve preferential treatment for the LDCs among the AACP countries. Most of the growth in the preference margin, in both absolute and relative terms, will come in the group of dairy products. The remaining agricultural products not included in this part of the analysis will also add to the growth of the preference margin for the LDCs among the AACP countries, though in relative terms the growth for these products will probably be less because the current Cotonou preferential tariffs on the products concerned are already relatively low or zero, such that going to zero-duty treatment for all of these products will not add the same percentage to the preference margin for the LDCs as is the case for the selected products included explicitly in this part of the analysis.

The EBA will provide significantly better preferences to the LDCs among the AACP than the EU's GSP would have done (where the LDC preferences under the GSP are taken into account). The EU's preferences for LDCs under the current GSP would actually have been less favourable than Cotonou for the LDCs among the AACP countries, granting a preference margin of just 78.6 million ECU. In that sense the EBA proposal improves prospects for the LDCs among the AACP countries, in a situation where the non-reciprocal Cotonou preferences are not legally sustainable in the WTO for the long run.

The situation is different for the non-LDC among the AACP countries. If the non-reciprocal preferences under Cotonou had to be abolished one day because of their inconsistency with WTO rules, and if an alternative trade regime among the ACP countries and the EU were not yet established at that moment, these AACP countries would fall back to the preferences under the EU's GSP for non-LDCs. As shown in Table 10, this would result in a significant loss of preference margin for these countries, which would decline from 206.2 million ECU under Cotonou to no more than 34.6 million ECU under GSP, for the product groups included in this analysis. On aggregate, for all (non-protocol) products covered here, preferences under GSP for these countries are worth only 15.8 per cent of the Cotonou preferences. At the same time, though the number of these countries is much smaller than that of the least developed AACP countries, the value of their agricultural exports to the EU, and hence the size of their preference margin under Cotonou, is much larger than for the least developed AACP countries.

³⁴ Among the 47 African ACP countries, 35 are least developed countries. The twelve AACP countries that are not least developed countries are Cameroon, Gabon, Ghana, Côte d'Ivoire, Kenya, Mauritius, Namibia, Nigeria, Senegal, Seychelles, Swaziland, Zimbabwe.

Table 10

Preference Margins for Selected Groups of Agricultural Products Exported from the AACP countries to the EU, Lomé Preferences and GSP Preferences Compared, 1999 EU Tariffs (1997 Trade Data)

Product group	Value of preference margin, Least Developed AACP Countries (Million ECU)			Value of preference margin, Other AACP Countries, (Million ECU)	
	Cotonou Preferences	EBA Preferences (% Cotonou)	GSP Preferences (% Cotonou)	Cotonou Preferences	GSP Preferences (% Cotonou)
Fish	41.7	41.7 (100)	41.7 (100)	115.1	14.9 (12.9)
Tobacco	29.7	29.7 (100)	29.7 (100)	38.7	10.3 (26.6)
Fresh fruit and vegetables	3.8	3.9 (101)	3.9 (101)	18.9	4.0 (21.0)
Processed fruit and vegetables	1.4	1.5 (107)	1.3 (92.8)	21.9	5.4 (24.7)
Cereals	0.0	1.3 (130)	0.0	0.0	0
Dairy products	1.3	3.9 (300)	0.0	0.0	0
Beef: general Lomé preferences	6.0	7.0 (116)	2.0 (33.3)	11.1	0
Sugar products: general Lomé preferences	0.5	0.5 (100)	0.0	0.5	0
Total of above products	84.4	89.5 (106)	78.6 (93)	206.2	34.6 (16.8)

Source: Authors' calculations based on Eurostat (various issues); Official Journal of the European Communities (various issues). For detail, see Annex tables.

Note: in this table, 0.0 denotes a positive value less than 0.1, while 0 denotes a zero value.

C. Summary and Conclusions

This chapter updates Part II of our earlier study (Tangermann and Josling, 1999), to take account of the changes made under the new Cotonou Agreement. It provides a quantitative analysis of the EU's trade preferences for the African ACP (AACP) countries in the sector of agriculture, with special emphasis on changes resulting from the Cotonou Agreement.

As far as trade preferences are concerned, the Cotonou Agreement foresees fundamental changes to the trading relations between the ACP countries and the EU. The details of these changes will still have to be negotiated. In order to bring EU-ACP trade arrangements into conformity with WTO rules, the current non-reciprocal (and hence WTO-inconsistent) preferences granted by the EU are supposed to be transformed into two different regimes. First, the EU will negotiate economic partnership agreements (EPA) with those ACP countries which do not belong to the group of least-developed countries on the UN list. These EPA are supposed to be reciprocal free trade arrangements, covered by WTO rules for regional free trade arrangements. Second, the EU intends to grant duty-free access for essentially all products to all LDCs (including nine LDCs that are not ACP countries).

However, until these new regimes are established, the Cotonou Agreement extends the non-reciprocal preferences granted under Lomé IV. For this temporary extension of the non-reciprocal preferences, the EU and the ACP countries will require, and have already requested, another WTO waiver.

The basic nature of the temporary non-reciprocal preferences under the Cotonou Agreement is identical to that of the preferences that existed already under Lomé IV. All industrial imports into the EU from the ACP countries continue to be duty-free. In agriculture, all preferences that existed

already under Lomé IV continue to be granted in exactly the same manner. All preferences for the Protocol products have survived intact, but also without any improvement.³⁵

However, Cotonou has improved preferential treatment of agricultural exports from the CAP countries significantly as many new tariff lines were added to the list of agricultural products benefiting from EU preferences. The number of agricultural tariff lines benefiting from preferences has grown from 1669 under Lomé to 2209 under Cotonou, i.e. by 32 per cent. Among the newly added tariff lines there is a rather large share of products with zero duty preferential tariffs. As a result, the share of tariff lines with zero tariffs among all agricultural products benefiting from preferences has grown from around one half under Lomé to about two thirds under Cotonou.

As under the Lomé Convention, many of the agricultural products benefiting from Cotonou preferences are not exported by the AACP countries. However, even for the AACP countries the number of relevant tariff lines, with actual exports to the EU, has increased from 502 under Lomé to 665 under Cotonou, i.e. also by 32 per cent.

The large increase in the number of agricultural tariff lines covered by preferences under Cotonou also means that a much larger value of trade now benefits from agricultural preferences. For the AACP countries, the share of their total agricultural exports to the EU covered by preferences has increased from 40.3 per cent under Lomé to 74.9 per cent under Cotonou. For the non-African ACP countries, the coverage of preferences has grown from 24.6 per cent of all agricultural exports to 45.4 per cent.

In the selected product groups covered in our original study, some new tariff lines were also added, and hence the preference margin originating in these product groups has increased marginally, from 269.3 million ECU under Lomé to 272.6 million ECU under Cotonou. However, the majority of tariff lines added to the list of agricultural preferences under Cotonou concerns products not included in the selected product groups covered in our original study.

In order to be able to present a consistent comparison of preference margins between Lomé and Cotonou, all agricultural products not yet covered in our original study were now also included in the analysis, so that results can now be presented for the comprehensive aggregate of all agricultural products covered by preferences under Lomé and now, in much larger number, under Cotonou. On the basis of this comprehensive analysis, it turns out that Cotonou has resulted in a significant expansion of the preference margin for agricultural products, from 280.6 million ECU under Lomé to 407.6 million ECU under Cotonou, i.e. by 45.2 per cent.

Once the non-reciprocal preferences now granted temporarily under Cotonou no longer get the blessing of the WTO, the ACP countries and the EU will have to move to new trading regimes. For the LDCs among the AACP countries the new regime envisaged (though not yet decided) is zero-duty treatment of nearly all products, except arms (the EU's "Everything but Arms", EBA, initiative). Analysis of this regime for the LDCs among the AACP countries, presented in this study only for selected product groups, shows that it will result in a slight improvement of the preference margin. For the aggregate of the product groups covered, the preference margin for the LDC among the AACP countries will rise from 84.4 million ECU under Cotonou to 89.6 million ECU under EBA. For the remaining ACP countries, the establishment of new economic partnership agreements with bilaterally free trade (of most products) is envisaged. However, should this fail, these countries would be thrown back to GSP treatment. For the AACP countries that are not on the list of the LDCs, this would mean a large reduction in the preference margin enjoyed by them, from 206.2 million ECU under current Cotonou preferences to no more than 34.6 million ECU for the aggregate of the selected product groups covered here.

³⁵ There is no banana Protocol with preferences under the Cotonou Agreement as the EU is still in the process of negotiating its new banana regime.

Overall it can be said that the Cotonou regime of preferences, established on an interim basis until the future ACP-EU trade regimes will have been negotiated, has not only maintained all agricultural preferences already existing under Lomébut, a large number of new products has been added to the list of preferences. Even though MFN tariffs for most of these newly added products are not very high (compared to 'core' products under the EU's Common Agricultural Policy), the preferential tariff reductions for these products are valuable, as shown by the significant increase in the overall preference margin. In other words, even though the current Cotonou preferences are only an interim regime, they have brought a noticeable improvement as compared with the situation under Lomé IV.

REFERENCES

- European Commission (1999). Website information on world market prices:
http://europa.eu.int/comm/dg06/agrista/table_de/43htm, 25 March 1999.
- European Communities (1994). Schedule LXXX, Part 1 MFN tariffs for agricultural products.
- European Union (1999). Official Journal C 212 A, Integrierter Tarif der Europäischen Gemeinschaften (TARIC).
- European Union, Official Journal, various issues.
- Eurostat (1998). EU Intra and Extra Trade in 1997 (CD-ROM).
- Faostat (1999). Trade Data.
- Tangermann, S., and T. Josling (1999). The Interests of Developing Countries in the Next Round of WTO Agricultural Negotiations. Study prepared for UNCTAD. Göttingen: Institute of Agricultural Economics. November 1999. The first part of that study was published in UNCTAD (2000), p. 105–23.
- UNCTAD (ed.) (2000). Positive Agenda and Future Trade Negotiations. New York and Geneva: United Nations.

V. PRIORITY ISSUES FOR TRADE IN AGRICULTURE UNDER THE COTONOU AGREEMENT AND THE REVIEW OF NEGOTIATIONS UNDER ARTICLE 20 OF THE WTO AGREEMENT ON AGRICULTURE: A PACIFIC PERSPECTIVE

Introduction

After 18 months of difficult negotiations the ACP member States and the European Union (EU) concluded a partnership agreement to replace the Lomé IV convention which ended on 31 March 2000. The new ACP/EU Partnership Agreement³⁶ signed in Cotonou, Benin on the 23 June 2000 is for a period of 20 years and represents a new era in ACP-EU relations. The 25 years of Lomé Conventions, characterized by trade arrangements which provided special and preferential market access for several sensitive agricultural commodities, is finally coming to an end. This had to be the case; the ACP was constantly reminded of this during the negotiations, because of the need to reach an arrangement which will be WTO consistent.

Mr. Poul Nielsen, the European Commissioner for Development and Humanitarian Aid said that “the partnership agreement will give a new momentum to the relationship between ACP States and the European Union our economic and trade relations will consist of a more comprehensive set of arrangements.... crucial to improving the ACP countries’ capacity in trade and to attract international private investment.....”³⁷ This would be possible because of the development cooperation objectives of the Cotonou Agreement (CA).

The ACP Secretary General, Mr. Jean-Robert Goulongana was more cautious in his comments on the new trading arrangement introduced by the CA. The new trade arrangements will seek to achieve its objectives by speeding up regional integration processes, as the stepping stone to a gradual and hopefully harmonious insertion into the world economy. Mr. Goulongana warned, that given the objectives and the instruments chosen to deliver the desired outcome, ACP countries will require painstaking preparations as major adjustments will be required by most of them.³⁸

Whether the new trade arrangement will deliver its stated objectives is something that only time will tell. But it is important to maintain the positive spirit in which the CA was negotiated and all the relevant parties begin the painstaking task of defining the priority trade issues and get on with the task of addressing them in the context of regional integration. It will be obvious that priority trade issues in one ACP region could be different in another. On this point, Mr. Bernard Petit, put it rather aptly when he said, “it was easier to confront these constraints at regional level rather than multilaterally, because it is easier to take into account the specific nature, needs and particular problems of each country”.³⁹

In terms of trade in agriculture issues, the CA incorporates the trade arrangements of Lomé IV. It is therefore useful in the context that those issues are identified.

³⁶The new ACP-EU Partnership Agreement is available at <http://www.europa.eu.int/comm/development/cotonou/overview.eu.htm>.

³⁷ Poul Nielsen, “The new Agreement will benefit the poorest”, ACP/EU Courier (Special supplement), September 2000, Pages 2-3.

³⁸ Jean/Robert Goulongana, “Together we must take up the challenges of this Cotonou Agreement, ACP/EU Courier (special Supplement), September 2000, Pages 4-5.

³⁹ Bernard Petit: “The Cotonou Agreement-One of its kind”, ACP/EU Courier (Special Supplement), September 2000, Pages 18-19.

A. Trade Issues in the New Agreement

The objectives of the new economic and trade cooperation between the ACP States and the EU are set out in article 34 of the CA. These include the smooth and gradual integration of the ACP states into the world economy in a manner that promotes sustainable development and contributes to poverty eradication. It is also envisaged that the ability and capacity of the ACP States to fully participate in the world economy will be enhanced.

The significant objective in terms of trade is the one referred to in article 34(3), which states that economic and trade cooperation shall enhance three specific aspects of the ACP States concerned, namely (a) production capacity, (b) supply capacity and (c) trading capacity. The manner in which the above enhancement objectives are to be implemented must comply with WTO trading rules.

Article 35 of the CA reveals some of the policy instruments that ACP States may consider, to improve their trading potential. These include improving the supply and demand side constraints and trade development measures. To understand the dynamics of how this may work, it must be understood that regional integration is put forward as a development cooperation strategy, in addition to being an economic and trade instrument. Hence the centrality of the regional economic partnership agreements (REPAs) to the whole trade framework of the CA. These REPAs will be negotiated at regional level or bilaterally between the ACP region or State and the EU, beginning in September 2002 and the new trading arrangements reached between the parties under these REPAs shall enter into force on 1 January 2008 (article 37 (1)).

This article also raises specific trade issues that the ACP States need to consider in the preparatory period before their goods can be exported to the EU markets. The first is that the REPA will be the instrument for the new trade regime between the EU and an ACP State or region. The negotiations will begin in September 2002 and must be in place by the end of 2007. Each ACP region or State must now prepare its negotiating mandate and upgrade its capacity to enter into these negotiations. It is critical that where technical assistance is needed at this stage, areas be identified and the financial provision provided by the EU be accessed to ensure that ACP States' capacities are strengthened. This is particularly critical for the non-LDC ACP States given the recent market access LDC proposal submitted by the Commission to the EU Council.

A priority issue in the negotiation for EPAs (economic partnership agreements) is the definition of the regional entities or State. Given the diverse trading status and ability of countries within the existing ACP regions, it may be inevitable that new regional entities will have to be devised to group together countries from the same geographical area with similar trade interests and references. This may be necessary to ensure that when EPAs are operational no one country within that regional is disproportionately stronger in comparison to the other members otherwise it will give rise to an uneven trade balance amongst the EPA members.

As an illustration, the 14 Pacific ACP States do not all trade with the EU at this point in time. Apart from fish, most if not all of the six recently admitted members of the ACP Group from the Pacific have very limited trading potential with the EU. Their benefits under the CA will be largely development aid and financial assistance. Even if they are willing to exploit their fisheries potential with EU, under the CA it will be dealt with under separate agreements under articles 40, which deals with "Cooperation in other areas". On the other hand, the other Pacific ACP States have exports to the EU and their export base could benefit from an EPA with the EU. The terms of trade under the EPAs is required to be WTO consistent. Pacific ACP States who are not WTO members may become *de facto* members under an EPA and whether they would be willing to pay the cost of trade facilitation that will be required needs careful consideration.

The second specific issue raised by article 37 is the special treatment for LDCs. In the light of the recent EBA (everything-but-arms)⁴⁰ proposal by the Commission it will now be necessary for the LDC-ACP States to start the process of analyzing the terms of the proposal in terms of the market access and market entry potential it provides. The EBA proposal merely provides market access on a tariff free and quota free basis. It does not guarantee market entry. The latter is governed by a different set of rules depending on the product an LDC-ACP State wishes to export to the EU markets. For example, if an LDC-ACP State wishes to export beef or fish to the EU market, under the proposal it can export any amount. Whether those exports will be allowed to enter the market is a matter to be determined under the sanitary and phytosanitary rules (article 48) that govern trade in those products. In addition, food safety and consumer protection rules (article 51) associated with those products in the EU will need to be satisfied before market entry is secured. In the case of processed products rules of origin will determine the issue of market access to LDCs. There is a commitment to review and simplify the rules of origin and the cumulation provision, at least as it existed under the Lomé IV Convention (article 37(8)).

The CA specifically recognizes the vulnerabilities of landlocked and Island ACP States and will undertake measures that will support them to overcome the natural, geographic and other obstacles hampering their development (article 87–90).

B. WTO Waiver a Must

Before referring to some of the issues that will be of concern to ACP States in the current review, and negotiations under article 20 of the WTO Agreement on Agriculture (AoA), it is important to stress the absolute need for the WTO waiver. It is a priority matter and the full and undivided support of all the EU member States and their ACP counterparts is essential to obtain this instrument. In this context it suffices to observe that since the EU and the ACP States submitted their request for the waiver to the WTO Committee on Trade in Goods it has received rough passage so far (the EU request for the WTO waiver is in WTO document G/C/W/187, 2 March 2000).

Much of the discussion so far on this request in the Committee on Trade in Goods has been to answer the concerns of the Latin American countries (Argentina, Brazil, Chile, Costa Rica, Ecuador and Uruguay. They are concerned about the impact a waiver may have on their potential access rights to markets for agricultural products in the EU, unfairly favoring the ACP producers. It is hoped in the end the expected result will be obtained, even if the WTO Ministers have to consider voting.

The waiver is important in protecting the non-reciprocal preferences granted under Lomé IV including the commodity protocols, until a new trade arrangement is put in place pursuant to the CA. It is expected that the waiver will cover the period 1 April 2000 to 31 December 2007.

C. Agricultural Trade Issues in WTO

In the context of the “analysis, information and exchange” (AIE) process now taking place in the build up to the review negotiations mandated under article 20 of the AoA, there are several trade issues that ACP countries have put forward as a matter of concern to them. These proposals for negotiations have been submitted to the WTO Committee on Agriculture.⁴¹ The countries that have

⁴⁰ For a summary of the “everything but arms” (EBA) initiative, see EU Commission website at: <http://europa.eu.int/comm/trade/miiti/devel/eba.htm>.

⁴¹ See proposals in WTO document submitted during the AIE process in the lead up to Seattle and the current Article 20 AoA mandated review negotiations e.g., AIE/52 (10/3/99), WT/GC/163, WT/GC/233, Job(99)/3169.

submitted them would like these issues to be included in the agenda for negotiations under article 20. Reference will be made to some of the issues here, but the list is not exhaustive.

- **General Principles:** The objective of the reform of trade in agriculture is to correct and prevent restrictions and distortions in world agricultural markets through the establishment of strengthened and more operationally effective rules and disciplines. This must ensure tangible market access to agricultural products from developing countries. The playing field in the international trading environment should be leveled. This means that no new commitments should be given by the developing countries until the commitments of the Uruguay Rounds are first assessed and it is shown that its benefits are fairly distributed to all countries.
- **Market Access issues:** Existing tariff peaks on actual or potential export products of developing countries should be eliminated. A list of such products should be established. Tariff escalation should be eliminated with a view to enhancing product diversification to higher value-added products in developing countries. New market access for developing countries should not erode existing access conditions. Tariff free and quota free access should be granted to LDCs. With the view to reducing imbalances on the level of actual tariff barriers, tariff reductions by developing countries should be made on bound rates and for these countries to maintain their current level of bound rates on key staples. The negotiations should address the need for technical and financial assistance to developing countries, especially for meeting the cost of compliance with SPS measures and technical standards in international markets.
- **Export Competition issues:** Export subsidies provided by developed countries should be eliminated but LDCs and Net Food Importing Developing Countries (NFIDCs) should be allowed the flexibility to provide export subsidies in order to promote the export of agricultural products with such potential. Export credits should be subject to internationally agreed rules to avoid the abuse of disciplines on export subsidies.
- **Domestic support issues:** The review of domestic support measures in developed countries is critical to removing the current imbalance. The AMS (Aggregate Measurement of Support) should be reduced and the extensive use of Green Box measures by the developed countries should be limited. The *de minimis* limit for developing countries should be increased from its current level of 10 per cent. In discussing domestic support issues, it must be borne in mind that certain commodities protocol preferences enjoyed by ACP States are linked to the domestic support measures within the EU. These preferences will need to be maintained at their current level for the foreseeable future. Their accommodation with the EPAs will be critical.
- **Special and Differential Treatment (S&D) Issues:** Developing countries require flexibility to apply measures to safeguard small farmers against import surges and unfair trade practices, particularly those affecting production of staple food products. The concept of Special and Differential Treatment is an important building block of the multilateral trading system. It was conceived in acknowledgement of the fact that developing countries have very different economic, financial, technological and development circumstances as compared to developed countries. During the current review of the AoA, S&D provisions should be made more operational and be specific in their focus. Such provisions should enable developing countries to address their legitimate concerns, including agricultural and rural development, food security, and subsistence and small scale farming for the development of domestic food production. The special needs of different groups of developing countries, such as small island developing and landlocked countries, must be covered under S&D provisions.
- **Development Box:** Several developing countries have proposed the creation of a "Development Box" with policy instruments aimed at; protecting and enhancing developing

countries domestic food production capacity particularly for staples; providing or at least maintaining existing employment for the rural poor; protecting farmers who are already providing an adequate supply of key agricultural products, from cheap imports and, to stop the dumping of cheap and subsidized imports on developing countries (for a detailed discussion of the “Development Box proposal, see WTO document G/AG/NG/13).

All of the above issues will be relevant for discussion and negotiation when the new trade arrangement between the EU and the new ACP regional entities begins in earnest in September 2002. The preparatory period for the EPA negotiations is between 1 April 2000 and September 2002. During this period, it is crucial to the success of ACP States’ negotiations that they prepare well and undertake research and impact studies, so that they and their negotiating positions are based on the results of these activities.

D. Needs Research and Impact Assessment

The issues above are only some of the technical trade related issues that will need careful consideration by ACP States in their negotiations with the EU for the EPAs, and also in the current mandated review negotiations under article 20 of the AoA. Given the complexity of issues and the lack of clear and reliable data on the usefulness of the outcome of the Uruguay Round on the ACP States, it would not be advisable to enter into negotiations either with the EU for the EPAs or, in the new WTO rounds without detailed research and the carrying out of thorough impact studies.⁴² The ACP States must first determine their present market access conditions now under the CA and what they will be at the end of the preferences. They need to determine the current constraints to market access as regards tariff peaks and tariff escalation as they apply to ACP products.

The CA undertakes to provide technical assistance and, in that context a series of technical studies should be undertaken to focus on improving technical assistance within the WTO framework, to allow ACP States to benefit from the WTO. In the context of the expected regional integration under the EU-ACP EPAs, studies should be carried out to analyze the best way to protect the commodity protocols in the arrangement. A detailed examination is required of the level of preferential margins over the next 10–20 years for each beneficiary country, and each protocol product, as well as the eventual impact of the removal of protocols.

Given the differences in stages of development within ACP regions, an examination of the current status of the integration process, its challenges and contradictions should be carried out as a matter of priority. If necessary support should be given for country assessments to be conducted to assist national authorities in ACP States determine the best trade options for them.

The need for carefully targeted studies and impact assessment is critical to ACP success. Technical data and research methodology must be carefully selected to bring out the facts and not to overstate a particular result if it is not representative. These data and information should be freely available to the ACP States for their use. It would be useful to develop an “**analysis, information and exchange**” process just for ACP States, to engender a better understanding of the common issues of concern to them and to also assist in identifying issues of divergences. This may give rise to a common approach in dealing with these issues.

⁴² See Dr. Moses Takere: “Setting the Agenda for Practical Research and Support”, a paper prepared as part of a project entitled “Helping the ACP Integrate in the World Economy”, copies can be downloaded from <http://oneworld.org/ecdp/>.

E. Conclusion

Without doubt, the CA has introduced innovations in ACP and EU relations. It has enhanced political dialogue and prompted a participatory approach. It seeks to refocus development policies on a poverty reduction programme. It also seeks to improve the framework for trade and investment development.

As Secretary General Goulongana of the ACP Group warned, there are difficult challenges that face the ACP States as a result of the CA. The ACP States must accept the challenges and move forward together with a clear vision and mandate to begin the EPA negotiations. The ACP as a group, needs an **Action Plan** that maps out the objectives, priorities and strategies for them during the preparatory period.

There are difficult political and institutional issues that need addressing even before the technical trade issues can be touched upon. First, the ACP States need a waiver to settle the prevailing uncertainty as regards the interim trade arrangement. EU and ACP cooperation at the WTO is critical and, the time may have arrived for a political angle to be brought to bear on this. Second, the urgent political issue to be addressed is the definition of “**regions**” for the purpose of the EPAs with the EU. This is a complex issue and one that may strike at the core of ACP solidarity. It is a challenge that ACP political leaders must accept and deal with urgently. Regional and sub-regional workshops should be the next step in educating ACP constituents before the difficult decisions are made.

VI. CONCERNS OF THE ACP STATES IN THE FIRST PHASE AND BEYOND OF THE WTO NEGOTIATIONS ON AGRICULTURE

Introduction

Article 36 of the Cotonou Partnership Agreement states that the new EU-ACP trading arrangements should be in compliance with the WTO provisions. Does this imply that ACP will have to give up the benefits that have accrued to them from the non-reciprocal tariff preferences and the commodity Protocols under the Cotonou Partnership Agreement, which requires a waiver from the WTO?

The WTO negotiation on agriculture is currently at its 'first phase' until March 2001. During this phase, WTO Members submit their proposals on the agenda of the agricultural negotiations which cover the scope, the structure and the timeframe.⁴³ Hence, to ensure that the negotiating agenda will include ACP interests, the ACP should identify key issues for negotiations that are relevant to the ACP interests; understand possible implications to the ACP of proposals made by other Members; and table their proposals if necessary.

However, it is still uncertain if a negotiating agenda will be agreed at the end of stock-taking of all the proposals (i.e. January–March 2001). This is because there is an ambiguity as to whether negotiations on agriculture could enter into the actual talks on concessions independent of the possible future trade talks in other sectors.

On one hand, there are countries which suggest that the negotiations on concessions should start at the end of the first phase, with a view to concluding it before 2005 at the latest, when the implementation of the Uruguay Round commitments by developing countries will have been completed (developed countries' complete the implementation in 2000, and they should maintain stand-still of their trade measures until the conclusion of the new negotiations). On the other hand, there are countries, including the EU, which would like to place the agricultural negotiations within a comprehensive Round of trade talks such that there will be useful trade-offs between the concessions made in the agricultural sector with those in other sectors.⁴⁴ Given the uncertainty with regard to the launching of a comprehensive Round, those countries would prefer to have a longer period for setting the negotiating agenda.

That is to say, as depicted in the figure below, the post-Uruguay Round (UR) rules and disciplines on agricultural trade are being made in parallel to the ACP-EU negotiations on the post-Lomé trade arrangements. The implication of this is that the ACP group faces an opportunity to collectively negotiate at the WTO towards new provisions on agriculture that would incorporate ACP-specific interests, which will create greater room for manoeuvre in negotiating post-Lomé agricultural arrangements. As the report to the ACP Council of Ministers (ACP/43/026/99, June 1999) states, "..... the ACP must reject any negotiating position which treats WTO rules and disciplines as unchangeable, and must be ready to harmonize its position for post-Lomé trade arrangements with its position in the WTO negotiations."

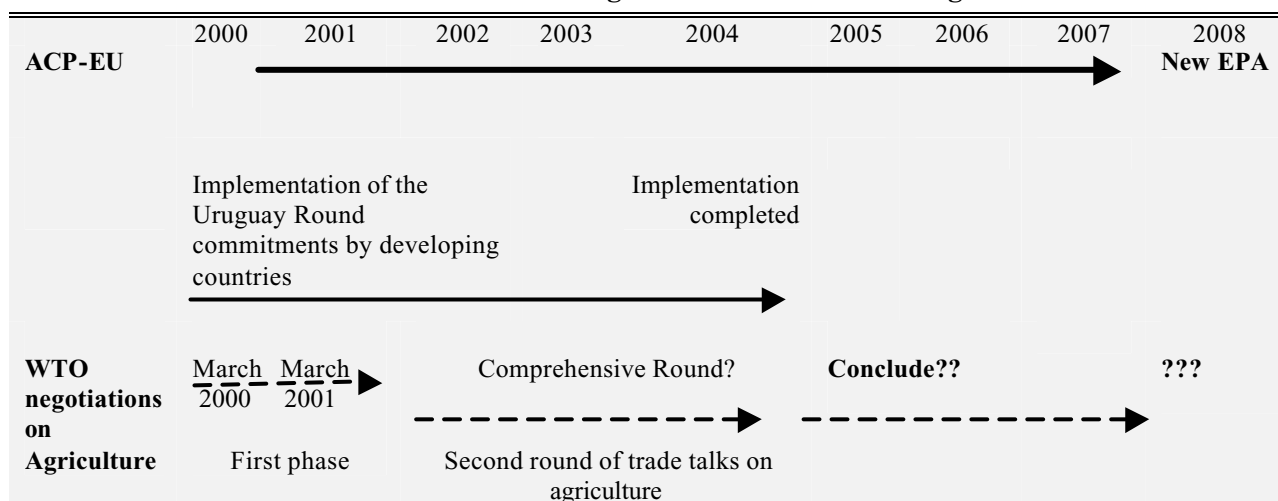
Against this background, the aim of this chapter is to examine what are currently proposed and discussed at the WTO concerning the negotiating agenda on agriculture, with particular attention to the market access commitments, and to explore if and how the elements of the Cotonou partnership

⁴³ The initial deadline for the submission of proposals is the end of December 2000. However, there will be flexibility for the submission of further or more detailed proposals after December 2000, provided that such submissions are submitted sufficiently in advance of the stock-taking exercise, covering all proposals submitted, to be undertaken at a March 2001 meeting of the Special Session.

⁴⁴ A comment made by Japan at the WTO meeting in June manifests this view well: "... The agriculture negotiations should be a part of a new Round, and we should respect the overall time frame of the forthcoming new round. It is, therefore, not possible at this stage to decide the time frame for the agricultural negotiations".

Agreement (CPA) on agriculture could be incorporated into the new rules and disciplines on agriculture under the WTO.

Time frame of the ACP-EU Negotiations and the WTO Negotiations



A. State-of-Play of the First Phase of the WTO Negotiations on Agriculture

It was decided at the WTO (24 March 2000) that the negotiations on agriculture would be held as the special session of the Committee on Agriculture, which takes place in Geneva four times a year. So far, 20 proposals have been submitted to the last four special sessions. A proposal normally focuses on one specific subject out of the three major areas of the Agreement on Agriculture (i.e. market access, export competition policy and domestic support), rather than providing a comprehensive negotiating proposal covering the entire field of the Agreement (as of November 2000, only the United States made a comprehensive proposal). Several proposals have been made on the special and differential (S&D) treatment. All the proposals are accessible at the WTO web site (<http://www.wto.org/>). The Annex to this chapter lists a summary of those proposals.

The negotiations on agriculture are a part of the “built-in” agenda of the Uruguay Round, i.e. the renewal of the negotiations as of the year 2000 was already mandated (built-in) in Article 20 of the Agreement on Agriculture. The first special session (24 March 2000) also decided that “... work within the framework of paragraphs (a), (b), (c) and (d) of Article 20 would be based on technical papers and submissions to be contributed by interested participants, as well as on the basis of information and data to be prepared by the Secretariat at the request of the Committee”.

The contentious element of Article 20 is the difference among WTO Members in the interpretation of “non-trade concerns” mentioned in the paragraph (c) of the article, i.e. what constitutes non-trade concerns and how they should be reflected in the scope of the negotiations. The difference characterizes a country’s general negotiating position at this stage. The fourth special session (15–17 November 2000) spent one full day of discussion on one proposal consisting of six discussion notes on non-trade concerns, jointly submitted by 24 developed and developing countries.

Article 20 of the Agreement on Agriculture: *Continuation of the Reform Process*

Recognizing that the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process, Members agree that negotiations for continuing the process will be initiated one year before the end of the implementation period, taking into account:

The experience to that date from implementing the reduction commitments;

The effects of the reduction commitments on world trade in agriculture;

Non-trade concerns, special and differential treatment to developing-country Members, and the objective to establish a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to this Agreement; and What further commitments are necessary to achieve the above mentioned long-term objectives.

A minimalist approach to the interpretation is that non-trade concerns are those two that are identified in the preamble to the Agreement on Agriculture, which are food security and environmental protection. Countries which support this view believe those issues should be treated within the framework of Annex II of the Agreement (i.e. Green Box, or domestic support measures that are exempted from the reduction commitments), and should not hinder the continuation of progressive agricultural liberalization.

The other extreme view is that non-trade concerns cover all other aspects that are not directly linked to trade but are affected by agricultural production, including rural employment, preservation of rural landscapes, prevention of natural disasters, cultural heritage and animal welfare, and varies according to a specific agricultural production condition faced by a country. This view among developed countries appears to be linked to a much more cautious approach towards agricultural liberalization. Among developing countries with the same view, the major concern to them is the absolute comparative disadvantage and lack of supply capacity that many of them face in agricultural production and trade, which they believe should be clearly identified as one of the target elements of special and differential treatment for developing countries.

While there is no such “collective negotiating position of a developing country”, developing country Members share a common interest in the negotiations, that is to reduce the unevenness between developed countries and developing countries in terms of rights and obligations under the Uruguay Round commitments, which favour developed countries.

One notable example of the unevenness is found in the domestic support commitments. While none of the non-LDC WTO-member ACP states claimed the right to use trade-distorting domestic support measures, generally called AMS (standing for Aggregate Measurement of Support) measures, 24 countries and the EU together maintain the right to spend up to US\$16.2 billion of AMS measures even after the completion of the implementation of the Uruguay Round commitments at the end of the year 2000 (calendar, financial or production year). The aggregated AMS values of four developed countries (Canada, Japan, Switzerland and the United States) plus the EU alone account for 78 per cent of the total.

Until the fourth special session (15–17 November 2000), the ACP as a group has not officially manifested its common position towards issues of their interests in the negotiations. Whether there is a need for such a manifestation requires careful consideration involving balancing of national interests and the ACP-wide interests, and goes beyond the scope of this short chapter. The chapter instead distinguishes elements in the proposals so far tabled, that are relevant to the interests of the ACP from the perspective of designing the post-Lomé trade arrangements in the area of agriculture.

B. Negotiating Proposals and the ACP Interests

There are two areas of immediate ACP concerns in setting the agenda of the WTO negotiations on agriculture. One is whether the negotiations could be directed towards an outcome which will help the ACP countries to at least maintain their share in the EU agricultural market. Another is whether there is a negotiating space to amend the AoA provisions in such a way that the provisions would endorse WTO-consistency to some, if not all, elements of the preferences under the CPA. Although not specifically covered in this chapter, other more general ACP concerns, that are shared by non-ACP developing countries, include the implications of the outcome of the negotiations on the ACP's efforts to enhance production diversification and supply capacity. The impact of the continuation of agricultural liberalization upon food security and rural development is also a burning concern, as the majority of the ACP states are LDCs or net food-importing developing countries (NFIDCs).

Could the ACP share in the EU agricultural market be secured?

It is in the agricultural sector, along with the textiles and clothing sectors, where the Lomé/Cotonou preferences provide the ACP with a substantially more advantageous trading position in the EU market than most other exporting countries, due to the EU's high MFN barriers and limited GSP preferences in this sector. Agricultural products account for around 30 per cent of all exports from the African ACP exports to the EU, and over 50 per cent of all exports from the non-African ACP to the EU. Over 35 per cent of the ACP agricultural exports to the world go to the EU market.⁴⁵

In this respect, the economic cost of losing the ACP preferential access to the EU market (including possible impediments to the continuation of the Commodity Protocols) as a result of future multilateral trade liberalization could outweigh the gains from global market opening on a MFN basis, at least in the short run. Erosion of preferential tariff margins under a multilateral trade liberalization setting is unavoidable. However, the speed and the degree of erosion may be controlled by the choice of the modality to be used for MFN tariff reductions. This in turn could influence the design of optimal post-Lomé trading arrangements, e.g. whether to move towards the establishment of regional economic partnership agreements (REPAs) or to shift to non-reciprocal preferences under the GSP.

Tariff reduction approach

Six proposals so far have been made specifically on the issue of market access, and several others also refer to some aspects of market access under a wider theme (e.g. S&D treatment). Almost all those proposals suggest that elimination of tariff peaks and tariff escalation should be the chief objective in this round of negotiations on agricultural market access. It has been well acknowledged that the tariff reduction modality and tariffication modality used during the Uruguay Round sometimes resulted in excessively high tariffs (tariff peaks) and in some cases exacerbated tariff escalation.

Targeting those problems specifically, many proposals indicate the use of a harmonization formula for tariff reduction instead of a (type of) linear cut approach that was employed during the Uruguay Round. The characteristics of a harmonization formula is that the higher the initial tariff rates, the greater the rate of reduction will be, leading to harmonizing the rates across all the tariff lines of a country. A good example of this harmonization approach is the Swiss Formula that was employed during the Tokyo Round on industrial products, which led to an average tariff reduction of 38 per cent, resulting in an overall weighted average industrial tariff of 6.3 per cent.

⁴⁵ Tangermann, Stefan. *The Cotonou Agreement and the value of preferences in agricultural markets for the African ACP* (A study prepared for UNCTAD). Institute of Agricultural Economics, University of Göttingen, Germany, November 2000.

The Swiss formula reads: $T_1 = c T_0 / (c + T_0)$ where c = reduction coefficient ($c > 0$). During the Tokyo Round, the EU, Nordic countries and Australia used the coefficient $c = 16$. The United States, Japan and Switzerland used $c = 14$.

Eliminating tariff peaks and tariff escalation would improve the general trading environment for all (albeit at differing degrees) at the multilateral level. However, looking only at the ACP situation, the anticipated gains in the EU market would be smaller to the ACP than to non-ACP developing countries, as the problems of tariff peaks/escalation are less pronounced under the Lomé/Cotonou preferences. A case to prove this point is the tariff escalation of the exports of cocoa products to the EU. As Table 1 of the EU tariff rates in 1999 shows, there is a clear jump in MFN rates according to the stage of production, e.g. from the mere 1 per cent for cocoa beans to: 9 per cent for cocoa butter; 10.7 per cent for cocoa powder without added sugar; and 8.7 per cent + 34 Euro/kg for cocoa powder with added sugar. GSP rates also exhibit nominal tariff escalation in cocoa paste, cocoa butter and cocoa powder, though at a lesser degree than MFN rates. As regards ACP rates, the only product in this list that is not duty-free is cocoa powder with added sugar. One notable thing is that, for this product range, the GSP for LDCs provides the best preferential access, as all the products listed here enter the EU duty free.

Table 1
EU tariff rates on cocoa beans and cocoa products (1999)

Product description	ACP	GSP for LDCs	GSP	MFN
HS: 180100 Cocoa beans	0	0	0	1.0%
HS: 180310 Cocoa paste, not de-fatted	0	0	7.9%	11.4%
HS: 180400 Cocoa butter, fat and oil	0	0	6.3%	9.0%
HS: 180500 Cocoa powder, not containing added sugar	0	0	3.7%	10.7%
HS: 180610.3010 Cocoa powder, containing added sugar or sweetener	34 Euro/kg	0	7.3% + 34 Euro/kg	8.7% + 34 Euro/kg

The concerns of the ACP in the area of tariff reductions are as to which tariff reduction approach would be selected for the next round of tariff reductions, and what would be the resulting tariff rate differentials between the CPA and the GSP, the CPA and the MFN and, the GSP and the MFN. For instance, if the differential between the CPA and the GSP are insignificant and the differential between the GSP and the MFN is substantial, an option to shift to non-reciprocal GSP may prove more attractive than to move to a region-to-region free trade agreement with the EU (REPAs). This option would be more attractive if there are improvements made on the current GSP scheme, such as binding the rates under the WTO (ASEAN made a proposal on this), or simplifying and harmonizing the rules of origin. If the differentials between the CPA and MFN is small, there would be effectively no preferential tariff arrangement (because, in principle preferential market access under the GSP is more limited than that under the ACP), and the ACP may consider a post-Lomé trading arrangement desirable in trade-related areas other than tariffs.

As for LDCs, a possible introduction of tariff-free and quota-free market access opportunities to Everything-but-Arms (EBA) would relieve them from a difficult decision over “reciprocal or non-reciprocal”. Their negotiating focus will be on the quality of such preferences, such as: whether the preferences will be bound under the WTO; whether a lenient graduation criteria would apply; whether non-stringent rules of origin would apply, etc.

Needless to say, a meaningful examination of the impact of various tariff reduction approaches could only be made at a tariff line basis for an individual ACP country, taking into account the factors such as the values of exports of the country and its weight in the country’s total exports. Two other things to note on the Swiss Formula are that: the tariff-cutting “power” of a Swiss Formula depends on the size of the reduction coefficient (see footnote 4); and when the initial tariff rates are already

low, the rate of reduction will be minute, and a cut-off rate should be set as a resulting new tariff rate could even exceed the initial rate. In fact, at the MFN tariff rates at the level of those listed in Table 1, a linear tariff cut of 36 per cent (as the average reduction rate during the Uruguay Round) would result in lower rates than a Swiss Formula cut with the reduction coefficient of 20.

At the current WTO negotiations, the use of a formula approach for tariff reductions appear to be well supported, though there has been clear opposition to such an approach from certain corners – countries such as Japan with the clear intention to maintain flexibility in tariff reductions so as to continue to protect sensitive product categories. They have suggested that each tariff rate had been set after careful consideration of product-specific conditions and market needs, thus tariffs could not be mechanically reduced according to a formula.

Other elements that have been proposed in relation to tariff reductions include:

The simplification of the tariff structure, in particular by converting all specific rates to *ad valorem* rates;

ACP concern → what will be the implication to the cases of ACP preferences where *ad valorem* components of MFN tariffs are exempted, though a specific component remains albeit after a reduction from corresponding MFN rates?

The elimination of variable and seasonal tariffs;

ACP concern → what will be the implications to products such as cucumbers and tomatoes where ACP preferences have been limited by seasonal differentiation of tariffs?

To start tariff reductions from applied rates rather than WTO-bound MFN rates

ACP concern → the “damage” will be larger to developing countries which currently enjoy certain flexibility in tariff management with a large gap existing between the bound rates and the applied rates.

Tariff rate quotas

The effectiveness of market access opportunities under tariff rate quotas (TRQs) have been an issue for discussion during the review of the implementation of the AoA since 1995. It has been found that on average around 40 per cent of TRQs were not filled. Nominally high tariff rates under quotas (though substantially lower than often prohibitive MFN rates) were considered as one of the reasons for low utilization of quotas, though in most cases importing countries stressed that TRQ under-fill was as a result of market decisions (i.e. not enough consumer demand for imports).

Several proposals have been made with regard to improving the utilization of TRQs. They call for substantial reduction of within-quota rates, if not setting all in-quota rates at zero per cent. Those proposals also call for a progressive expansion of quota quantities, possibly by binding an annual increase of quota quantities as part of the commitment.

The administration methods for TRQs has been an issue for discussion as well, and the lack of clear WTO rules on the administration (e.g. import licence allocation, criteria concerning eligible importers, etc.) led to several proposals to introduce a clear guideline so as to the TRQ administration methods harmonized and transparent.

Another area where the Agreement on Agriculture does not provide a clear rule is country-specific allocation of TRQs, in particular the treatment of preferential quotas vis-à-vis bilaterally allocated TRQs. This issue is extremely relevant to the ACP, as it concerns the WTO-consistency of quota allocation under the Lomé/Cotonou Commodity Protocols. Only ACP quotas for sugar are bound under the WTO, i.e. included in Part I section 1-B of the EU’s Uruguay Round Schedule of Commitment. The banana dispute case indicated that such unbound autonomous preferential quotas

could be challenged by other Members against its compliance to WTO provisions. This issue is discussed in more detail in the following section.

Apart from preferential allocation of TRQs, one *Problématique* of bilateral allocation of TRQs from the perspective of a developing country exporter is that such TRQs are normally received by major developed country exporters. A group of developing countries (including some African ACP states) made proposals on this issue, suggesting, *inter alia*: mandatory filling of quotas; harmonization of the TRQ administration methods and, the provision of appropriate mechanisms to help new suppliers from developing countries ensure equal access to TRQs in developed countries.⁴⁶

Negotiating proposals on export competition policy and domestic support

Proposals on issues other than market access also include some elements that are relevant to the ACP's interests in securing its market share in the EU. Three out of four proposals so far made on export competition policies suggested total elimination and prohibition of the future use of export subsidies. Not surprisingly, one which did not call for total elimination was the EU, whose proposal suggested concrete measures to discipline (but not necessarily to eliminate) export subsidizing elements of export credits, activities of single-desk exporters and food aid.

The direct implication of elimination of export subsidies will be felt by ACP sugar exporters as this should lead to the Common Agricultural Policy (CAP) reform, which will be most likely to reduce the guaranteed price the ACP exporters receive for their sugar quota. However, putting the sugar issue aside, the highly trade-distorting nature of export subsidies has been undercutting the competitiveness of developing countries producers and exporters of products such as dairy products, maize, poultry meat, etc., in the domestic, regional and the world agricultural markets.

Domestic support commitment itself does not have much direct bearing on market access improvement. Indirectly however, changes in the domestic support commitments could have impacts on the ACP through possible CAP reform, as in the case of export subsidy elimination discussed above, if proposals such as that submitted by the Cairns Group on substantive cuts in AMS measures as well as elimination of the Blue Box provision find their way onto the agreed negotiating agenda. ANNEX V, Article 1.2 (a) of the CPA indicates that the Cotonou preferences are "... subject to specific rules introduced as a result of the implementation of the CAP", though it is ambiguous as to how changes in CAP could affect the scope and the structure of the Cotonou preferences.

Apart from reductions in domestic support, two proposals, one from the United States and another from a group of developing countries, suggested the same idea, though differing in details, of abandoning the current three-Box (Amber, Blue and Green) approach. The United States proposed to collapse three Boxes into two - exempt measures and non-exempt AMS measures, and reduce non-exempt measures using a formula approach. It also suggested that the target level of the AMS could equal "the fixed percentage of the member's value of total agricultural production in a fixed base period".

A group of developing countries (Cuba, the Dominican Republic, El Salvador, Haiti, Honduras, Nicaragua, Kenya, Pakistan, Sri Lanka, Uganda and Zimbabwe) suggested to collapse all the three Boxes into one "General Subsidy" Box. The objective of this proposal is to reduce the unevenness in the domestic support commitments which is described earlier in this chapter. The proposal then suggests: setting the maximum ceiling to the total support (e.g. 10 per cent of the value of production); and creating a "Development Box" as a S&D provision for developing countries. It is proposed that a Development Box should provide developing countries with sufficient flexibility in implementing commitments on domestic support as well as on market access and export subsidies.

⁴⁶ The proposal was jointly submitted by: Cuba, the Dominican Republic, El Salvador, Honduras, Kenya, India, Nigeria, Pakistan, Sri Lanka, Uganda and Zimbabwe on 28 September 2000.

Is there a negotiating space to endorse WTO-consistency to some, if not all, elements of the preferences under the CPA?

The agricultural preferences under the Cotonou Partnership Agreement (CPA) are WTO-inconsistent, first and foremost because the Lomé/Cotonou tariff preferences violate the WTO most-favoured nation (MFN) principle. The 1979 Enabling Clause does not apply because the Lomé/Cotonou preferences are provided separately from the Generalized System of Preferences (GSP) to a limited number of developing countries which include non-LDCs.

With respect to the compliance with the Agreement on Agriculture, the Commodity Protocols under the Cotonou/Lomé preferences, except the Sugar Protocol, have an edgy status in face of the AoA tariff rate quota (TRQ) for the following two reasons.⁴⁷

Table 2
The Commodity Protocols and WTO consistency

The Cotonou Partnership Agreement	Requires a waiver from the MFN principle under Article XXV of GATT/Article IX of Marrakesh Agreement Establishing the WTO because:
ACP tariff preferences on agricultural products (ANNEX V: Article 1)	Violating the most favoured nation (MFN) principle both under the GATT 94 and the 1979 Enabling Clause.
The Banana Protocol (ANNEX V: Article 1 and Protocol 5)	In 1999, the WTO Dispute Settlement Arbitrators found that: Tariff-free quotas to ACP (of 857,700 tonnes in 1999) under the Lomé, unbound under the AoA TRQ regime, violated Article XIII:2(d) of GATT (<i>Non-discriminatory administration of quantitative restrictions</i>). The licensing system for importing bananas was GATS-inconsistent, and was not covered under the waiver.
The Sugar Protocol (ANNEX V: Article 13 and Protocol 3)	Tariff-free quotas of 1.3 million tonnes of sugar are covered under the AoA TRQ regime. Special preference for sugar are not included in the EU's AoA TRQ schedule.
The beef and Veal Protocol (ANNEX V: Article 14 and Protocol 4)	Quotas with the ACP preferential tariff rate are not included in the EU's AoA TRQ schedule.

First, TRQs under the AoA are bound, ie. the MFN rates, the within-quota tariff rates and the corresponding annual quota quantity for each TRQ are included in Part I section 1-B of the Schedule of Commitment. The quotas under the Lomé Commodity Protocols, except for the case of sugar, however were provided outside the AoA TRQs. Unbound preferential quotas are open to possible challenges from other WTO Members against the violation of, *inter alia*, Article XI (*General Elimination of Quantitative Restrictions*) of the GATT 1994.

⁴⁷ Under the AoA, TRQs are provided to those products whose pre-Uruguay Round non-tariff measures had been converted into tariffs and: those which comprised less than 3 per cent of the domestic consumption in the base period of 1986/88 (minimum market access opportunity); or those which comprised equal to or more than 3 per cent of the domestic consumption in the base period (current market access opportunity).

Second, the AoA TRQs under the minimum access opportunities, in theory, are considered to be “global quotas”, i.e. they should be open to all exporting countries on a MFN basis.⁴⁸ In cases where specific volumes of minimum access quotas have been earmarked for specific exporting countries, the disciplines described in Article XIII (*Non-discriminatory administration of quantitative restrictions*) of GATT 1994 apply.⁴⁹ The “Banana Dispute” revealed that a WTO waiver may not cover a Commodity Protocol in its entirety, and this could set an unwelcome precedent to other protocol commodities.

Is there any possibility under the Agreement on Agriculture that the WTO-inconsistency problem could be tackled, i.e. those preferences to *agricultural* products could receive a type of Enabling Clause treatment? A differential treatment of agricultural products under the WTO provision is legally possible by invoking Article 21.1 of the Agreement on Agriculture, which states “The provision of GATT 1994 and of other Multilateral Trade Agreements in Annex 1A to the WTO Agreement shall apply subject to the provisions of this Agreement”. That is to say, if some elements of the Lomé/Cotonou preferences on agricultural products are incorporated into the Agreement on Agriculture as a result of the current negotiations, the WTO-inconsistency problems of such preferences will be solved.

There are possibly two areas in the Agreement on Agriculture, which could accommodate some of the concerns related to the negative effects of losing preferential market access in the ACP’s important markets. One is in the area of non-trade concerns as mentioned in Article 20. The negative effect of the loss of preferences to those products on which a country’s foreign exchange earnings largely depend would touch upon other production and services sectors in the economy. This is particularly significant among small size ACPs with high concentration on exports of one or two agricultural commodities. As a delegate of one of the Caribbean ACP countries stated in the fourth special session; “No bananas, no ship. No ship, no trade. No trade, no development”. A general position of the Cairns Group countries is that a non-trade concern should be best addressed by non-trade distorting measures. The effect to the world economy of a (small) economy maintaining a share in a given market through preferential tariffs or quotas would be insignificant and could be considered as least trade-distorting.

Another arearelates to the S&D provisions. At the first phase of the negotiations on agriculture, discussions are being made on the “concept” of a S&D provision, i.e. whether the current structure of the S&D provisions (more favourable threshold, longer implementation period) necessarily tackles the adjustment problems faced by individual developing countries. While generally agreed by WTO Members that the S&D provisions are not a panacea to all the problems, there are suggestions, such as those made in the proposal by the ASEAN countries, that “... S&D... must be essential in addressing (developing countries’) legitimate concerns if they are to meaningfully participate, contribute and benefit from furthering the reform process”. The ACP countries may explore how their specific concerns with regard to certain trade preferences provided to them could be linked to other developing countries’ legitimate concerns, so as to identify a S&D provision with a sufficient coverage of those concerns.

⁴⁸ Under current access opportunities, TRQs may be allocated to countries which were substantial suppliers in the base period, though the Schedule does not always specify supplier countries and the corresponding quota quantity received by them.

⁴⁹ Article XIII. 3 of GATT 1994 states “... In the case of quotas allocated among supplying countries, the contracting party applying the restrictions shall promptly inform all other contracting parties having an interest in supplying the product concerned of the shares in the quotas currently allocated, by quantity or value, to the various supplying countries and shall give public notice thereof.”

C. Conclusion

Over the next seven years, the ACP has an opportunity to collectively negotiate at the WTO towards new provisions on agriculture that would incorporate ACP-specific interests, which will create greater room for manoeuvre in negotiating for post-Lomé agricultural arrangements.

In the current agenda-setting phase of the WTO negotiations on agriculture, two issues may be identified as immediate ACP interests: to maintain the ACP share in the EU agricultural market and to improve WTO-consistency of the CPA, with a view to creating wider policy options when designing the post-Lomé trade arrangements. However, the negotiating objective and strategies that the ACP could take depend also on a possible destination that the ACP may choose to take on the basis of post-Lomé trade arrangements. Shall the destination be:

- to maintain the current structure of non-reciprocal preferences by amending relevant WTO provisions to make the preferences WTO-consistent;
- to shift to non-reciprocal GSP; or
- to enter into a region-to-region free trade agreement with the EU?

In this regard, different sets of the ACP's main concerns are grouped below, according to each possible destination.

Maintain the current non-reciprocal preferences:

Which elements of negotiating issues (such as approach to tariff reductions and the TRQ administration) would bear positive/negative implications to the value of preferences provided by the CPA, and how the ACP countries could actively react to ensure that the negotiating agenda would reflect the ACP interests?

What are the elements in the Agreement on Agriculture, including those aspects of non-trade concerns the ACP may face through the continuation of agricultural reform, and what appropriate S&D provisions could alleviate the problems of WTO-inconsistency of the CPA in the agricultural sector?

Shifting to non-reciprocal GSP:

Could the GSP product coverage and preferential margins be improved, at least in the agricultural sector, with an argument based on the need to fully implement the 1979 Enabling Clause, the preamble and Article 20 of the Agreement on Agriculture?

Could agricultural GSP preferences be bound under the Agreement on Agriculture?

Could the rules of origin be improved and harmonized, and the graduation criteria be harmonized?

Could there be post-Lomé arrangements in trade-related fields (e.g. SPS and TBT) even without free-trade arrangements, such that the ACP will have "GSP-plus" market access conditions in the EU?

Shifting to a regional free trade agreement with the EU

How concrete and operational could arrangements in trade-related fields be?

Will the transition period to the REPAs be recognized within the WTO provisions?

What are the S&D elements to be introduced in the Agreement on Agriculture that would relieve difficulties faced during the transition period?

Annex

Table 1

Country Proposals on Negotiation Issues under the AoA

Market access

Doc number	Country	Subject	Date
G/AG/NG/W/12	Canada	Market access	19 June 2000
Outline	<p>Reductions of single-stage tariffs (MFN tariffs)</p> <ul style="list-style-type: none"> - Eliminate tariff escalation by applying formula (harmonization) approach; - Set a "threshold" (i.e. maximum) tariff rate, above which duty-free TRQ access should be provided, and maximum tariff binding at the end of implementation period; - Set minimum "total reduction" for each tariff line from the UR <i>base</i> rate such that the total reduction being the sum of UR tariff cuts <i>plus</i> those undertaken in the new negotiations. <p>Reduction of two-stage tariffs and tariff quotas</p> <ul style="list-style-type: none"> - Set all the in-quota tariffs at 0 per cent; - Set a target level for TRQ quantities, e.g. at a certain % of the domestic consumption in a recent period; - Provide TRQs on a product-specific basis (e.g. pork, instead of meat or instead of carcasses and various pork cuts); - "Make commitments on over quota tariffs taking into account the extent of liberalization provided through the tariff quota". <p>TRQ administration - set guidelines to improve transparency of the administration.</p> <p>Complementary initiatives - sectoral initiatives such as zero-for-zero for oilseeds and oilseed products and barley and malt.</p>		
G/AG/NG/W/15	United States	Proposal for comprehensive long-term agricultural trade reform	23 June 2000
Outline	<p>Time frame - overall agreement by 2002, and agreement on basic modalities at the midterm of the negotiations in 2001.</p> <p>Tariffs</p> <ul style="list-style-type: none"> - reduce tariffs from "applied rates" through progressive implementation of annual reduction commitments over a fixed period; - bind rates only in <i>ad-valorem</i> or specific rates; - eliminate SSGs. <p>TRQs</p> <ul style="list-style-type: none"> - increase quotas through progressive implementation of annual reduction commitments over a fixed period; - establish disciplines to ensure TRQ fill. <p>STEs</p> <ul style="list-style-type: none"> - end exclusive import rights of single desk importers; - establish rules to increase transparency in the operation of single desk imports, including their decisions on quality and source of imports. <p>Bio-technology</p> <ul style="list-style-type: none"> - make process covering trade of those products transparent, predictable and timely <i>other</i>; - provide greater tariff reduction on products of interests to DCs and LDCs; - sectoral initiatives may be taken beyond those commitments generally agreed in the areas of market access (and export competition and domestic support), including zero-for-zero and harmonization initiatives. 		
G/AG/NG/W/37	Cuba, Dominican Republic, El Salvador, Honduras, Kenya, India, Nigeria, Pakistan, Sri Lanka, Uganda, Zimbabwe.	Proposal for comprehensive long-term agricultural trade reform.	23 June 2000
Outline	<p>Tariffs</p> <ul style="list-style-type: none"> - eliminate tariff peaks and escalation by applying appropriate tariff reduction (harmonization); - fullest liberalization by developed countries of tropical products in processed form; - set the reduction rates at trade-weighted level; - eliminate variable and seasonal tariffs, except when provided under S&D provisions; - convert all specific rates to <i>ad-valorem</i> rates, and further simplify tariff structure in developed countries. <p>TRQs</p> <ul style="list-style-type: none"> - establish guidelines to the TRQ administration methods; - common base period for calculating domestic consumption for the minimum access commitment; - basing of quotas on specific products, rather than aggregated commodity groups; - a mandatory filling of quotas, in developed countries, before imports take place at the above quota level; - appropriate arrangements to ensure that new suppliers from developing countries should have equal access to allotment within the TRQs; - regular enhancement of the TRQs administered by developed countries so as to improve market access for developing countries. 		

Doc number	Country	Subject	Date
G/AG/NG/W/54	Cairns Group	Market access	10 November 2000
Outline	<ul style="list-style-type: none"> - deep cuts to all tariffs using a formula approach which delivers greater reductions on higher level tariffs, including tariff peaks, eliminates tariff escalation, and establishes maximum levels for all tariffs and additional steps to eliminate tariffs and other duties and charges, where possible; - tariff reduction commitments on the basis of final bound tariffs; - additional provisions to make tariff regimes simpler and more transparent; no bound duties containing specific minimum entry price schemes, including tariff commitments expressed in ad-valorem terms; - substantial increases in all tariff quota volumes; - additional or strengthened rules and disciplines to ensure that tariff quota administration does not diminish the size and value of the market access opportunities provided by such tariff quotas; - elimination of access to the special agricultural safeguard mechanism in Article 5 of the Agreement on Agriculture; - faster and deeper cuts in, or elimination of, tariffs on all agricultural products, including value added products, produced in and exported by developing countries; - tariff quota administration rules which provide improved opportunities for exports from developing countries. 		
Doc number	Country	Subject	Date
G/AG/NG/W/57	Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Kyrgyz Republic, Latvia, Slovak Republic, Slovenia, Croatia and Lithuania	Market access	14 November 2000
Outline	<ul style="list-style-type: none"> - these countries that in the course of the negotiations, the high level of trade liberalization and market opening and extreme vulnerability resulting from the difficult and painful process of transformation to a fully-fledged market economy will be fully recognized; - a specific flexibility provision be included in any negotiating guidelines and modalities to be agreed for the purpose of future tariff reductions and other market access commitments, e.g. exemption of low tariffs from further reduction commitments for these countries, as well as would allow for selective reduction commitments; - any negotiating guidelines and modalities regarding future tariff reductions and other market access commitments address all non-tariff measures and practices that hinder imports and through its effects provide protection to domestic producers. 		
Doc number	Country	Subject	Date
G/AG/NG/W/58	United States	Proposal for tariff rate quota reform	14 November 2000
Outline	<ul style="list-style-type: none"> - develop additional disciplines for TRQs that ensure that TRQ administration does not become a barrier to trade; - reduce in-quota duties based on the historical performance of TRQ fill rates - the lower the fill rate, the deeper the cut; - cut tariffs using an approach that reduces disparities across countries and progressively increase TRQ quantities; - an automatic trigger mechanism to reduce in-quota duties when TRQ fill is low. 		

Export subsidies

Doc number	Country	Subject	Date
G/AG/NG/W/11	Cairns Group	Export competition	16 June 2000
Summary of the Proposal	<p>Elimination and prohibition of export subsidies:</p> <ul style="list-style-type: none"> - starting from the UR final bound level of budgetary outlay and quantity; - down payment (not less than 50 %) in terms of reduction in the first year; - "accelerated" process of reduction in the following years. <p>Development of rules to eliminate subsidy elements in measures such as export credits, insurance and guarantees.</p> <p>Elimination of the Peace Clause against export subsidies as of 2004.</p> <p>S&D treatment - provide DCs with "useful and effective tools to cushion the impact of the reform process", such as:</p> <ul style="list-style-type: none"> - a longer implementation period; - extension of S&D measures under Article 9.4 until all ES are eliminated. 		

Doc number	Country	Subject	Date
G/AG/NG/W/15	United States	Proposal for comprehensive long-term agricultural trade reform	23 June 2000
Summary of the Proposal	<p>Export subsidies</p> <ul style="list-style-type: none"> - eliminate ES through a fixed period. <p>Export taxes</p> <ul style="list-style-type: none"> - prohibit the use of export taxes for competitive advantage or supply management purposes. <p>Export credit</p> <ul style="list-style-type: none"> - negotiate on rules on export credits in the OECD (not in WTO). <p>Export STEs</p> <ul style="list-style-type: none"> - end exclusive import rights of single desk exporters; - establish rule for notifying acquisition costs, export pricing, and other sales information for single desk exporters; - eliminate the use of government funds, etc., to single desk exporters. 		
Doc number	Country	Subject	Date
G/AG/NG/W/34	EU	Export Competition	22/Sept/2000
Summary of the Proposal	<p>While other export competition policies have equal level of trade-distorting elements, the current agreement "unfairly" puts only export subsidies under reduction commitments. Disciplines should be made on other measures, such as:</p> <ul style="list-style-type: none"> - export credits, insurance and guarantees - to be brought into the same reduction commitments as export subsidies; - food aid - to examine the export subsidy elements (e.g. food aid being used as surplus dumping); - STEs (e.g. single-desk importer/exporter). <p>EU is willing to further reduce its export subsidies, but only if other export competition measures are brought into the WTO disciplines.</p>		
Doc number	Country	Subject	Date
G/AG/NG/W/38	MERCOSUR (Argentina, Brazil, Paraguay, Uruguay), Chile, Bolivia, Costa Rica	Export subsidies - food security or food dependency?	27/Sept/2000
Summary of the Proposal	<p>This is a discussion paper on the view of those countries on a linkage between export subsidies and food security in importing (developing) countries.</p> <ul style="list-style-type: none"> - Export subsidies only help urban consumers in the short term, but deteriorates the long-term competitiveness of local producers; - solution to food security in NFIDCs is not the provision of artificially cheap food, but balance-of-payments improvement; - thus, food security conditions in NFIDCs could only improve when the Marrakech Decision, especially on the provision of technical and financial support are made as concrete measures; - at the same time, export subsidies, which puts developing country producers at a competitive disadvantage, should be totally eliminated. 		

Domestic support

Doc number	Country	Subject	Date
G/AG/NG/W/13	Cuba, Dominican Republic, Honduras, Pakistan, Haiti, Nicaragua, Kenya, Uganda, Zimbabwe, Sri Lanka, El Salvador	Special and differential treatment and a development box	23 June 2000
Summary of the Proposal	<ol style="list-style-type: none"> 1. Create a Development Box which include policy instruments aiming at: <ul style="list-style-type: none"> - protecting domestic food production capacity especially key staples; - increase food security/accessibility; - sustain employment for the rural poor; - protect farmers from cheap imports; - supports small farmers in increasing their productivity and competitiveness; - prevent dumping. 2. DCs may apply positive list approach to agricultural liberalization (i.e. DCs may exclude basic staples or other products that are considered important for food security purpose). 3. DCs may raise their tariff bindings on key products (for food security) if cheap imports threatens their domestic production (similar to SSG). <ul style="list-style-type: none"> - OECD countries should be banned from applying SSGs. 4. OECD countries to reduce tariffs for products of interests to developing countries. 5. Increase the level of <i>de minimis</i> limit, e.g. from the current 10% to 20%. 		

Doc number	Country	Subject	Date
G/AG/NG/W/14	Cuba, Dominican Republic, Honduras, Pakistan, Haiti, Nicaragua, Kenya, Uganda, Zimbabwe, Sri Lanka, El Salvador	Green Box/Annex 3 subsidies	23 June 2000
Summary of the Proposal	<ol style="list-style-type: none"> 1. Collapse all the domestic support categories into one "General Subsidy" Box . <ul style="list-style-type: none"> - Criteria should be established for this box; - Common level of non-actionable supports should be allowed (e.g. 10% of production); - Subsidies of 5% above this 10% (common level) should become actionable for OECD countries, while due restraint should apply for DCs; - Subsidies above "this" level (common level?) should be prohibited. 2. The development Box, in addition to General Subsidy Box, should become available to DCs . <ul style="list-style-type: none"> - The box should provide DCs with flexibility of import controls, tariff barriers and domestic support for items which are already being produced in sufficient quantities or which countries would like to produce locally . 3. The Peace Clause should be terminated at the end of 2003, even for Green box measures- This clause should become S&D, i.e. available only for DCs. 		
Doc number	Country	Subject	Date
G/AG/NG/W/15	United States	Proposal for comprehensive long-term agricultural trade reform	23 June 2000
Summary of the Proposal	<ol style="list-style-type: none"> 1. S&D treatment <ul style="list-style-type: none"> - Market access: tariff reduction of products of interests to DCs and LDCs; - Intensify technical support to DCs and LDCs . 2. Food security <ul style="list-style-type: none"> - Renew the food aid commitment as in the Marrakesh Decision (but the export credit disciplines should be developed in the OECD); - Establish an "export reporting system" to increase information on the level and direction of international grain and oilseed transactions; - Strengthen WTO disciplines on export restrictions . 		
Doc number	Country	Subject	Date
G/AG/NG/W/16	United States	Note on domestic support reform	23 June 2000
Summary of the Proposal	<p>Reducing trade-distorting DS</p> <ul style="list-style-type: none"> - Formula-based approach; - Collapse DS categories into two: exempt support and non-exempt support; - Starting point of reductions of non-exempt support will be the final bound level of AMS; - The target level of AMS will equal a "fixed percentage of the members' value of total agricultural production" in a fixed "base" period (fixed percentage will be the same for all Members); - Provide S&D exemption to developing countries; - Maintain the de minimis limit in the current form; - Establish a technical working group on domestic support to review methodological provisions. <p>Modifying the criteria of exempt measures .</p> <ul style="list-style-type: none"> - Including: farm income safety-net and risk management tools; environmental and natural resource protection; rural development; new technology; structural adjustment; - Additional criteria-based support measures for DCs should be exempted. 		
Doc number	Country	Subject	Date
G/AG/NG/W/56	Bulgaria, Czech Republic, Estonia, Georgia, Hungary, Kyrgyz Republic, Latvia, Slovak Republic, Slovenia, Croatia and Lithuania	Domestic support – additional flexibility for transition economies	14 November 2000
Outline	<ul style="list-style-type: none"> - For countries in transition, exempt investment subsidies and input subsidies generally available to agriculture, interest subsidies to reduce the costs of financing as well as grants to cover debt repayment from domestic support reduction commitments that would otherwise be applicable to such measures; - increase the <i>de minimis</i> threshold applicable to the transition economies. The provision could be invoked by individual countries only until the problems in the agricultural sector described above persist. 		

Special and Differential Treatment

Doc number	Country	Subject	Date
G/AG/NG/W/55	ASEAN	Domestic support – additional flexibility for transition economies	14 November 2000
Outline	<p>Schedule and Level of Commitments : Flexibility in terms of longer timeframe for the implementation of commitments, which must continue to be given to developing countries, will not suffice. The nature, depth and substance of commitments must also be different.</p> <p>Export Subsidies Developed countries must immediately eliminate all forms of export subsidies and commit to their unconditional prohibition. Developing countries, on the other hand, must be able to continue using existing flexibility with respect to export subsidies (i.e. Article 9.4).</p> <p>Domestic Support A. <u>Developed Countries:</u></p> <ul style="list-style-type: none"> - Developed countries must commit to a substantial downpayment of aggregate and specific support from a determined base period, in absolute terms. The remaining AMS should then be subject to reduction over time leading to their elimination; - Reduction commitments in the next phase must therefore be made on a disaggregated level, to ensure that all sectors are included in the multilateral disciplines and to avoid greater distortions in the level of support between commodities; - The Blue Box category of support measures must be subjected to similar substantial reduction commitments leading to their elimination; - Developed countries should no longer be allowed to have the additional flexibility to apply <i>de minimis</i> ; - The criteria for “Green Box” measures or Annex 2 of the present Agreement must be reviewed to ensure that they meet the fundamental requirement that they have at least minimal or no trade distorting effects or effects on production; - There should be an overall cap on the budget of developed countries allocated for Green Box measures. <p>B. <u>Developing countries:</u></p> <ul style="list-style-type: none"> - S&D under the umbrella of domestic support must therefore provide developing countries the flexibility to pursue policies and strategies that would allow them adequate incentives to develop their agricultural potential; - Direct or indirect measures that are an integral part of the development programmes of developing countries, including investment and input subsidies, as identified in Article 6.2 of the present Agreement, must remain exempt from reduction commitments during the next phase of the reform programme; - Measures intended to promote agricultural diversification must be exempt from reduction commitments; - The existing <i>de minimis</i> concept and threshold must continued to be applied but only to developing countries; - Developing countries must be given an effective and meaningful degree of autonomy on policy instruments to address food security concerns; - The Agreement must be able to make an appropriate differentiation between domestic measures which result in overproduction and the ability to carve out a niche in the international market, and those measures designed to face the challenges of food security of developing countries. <p>C. <u>Market Access:</u></p> <ul style="list-style-type: none"> - Pursue the fullest liberalization of trade in tropical products, by among others, applying further tariff reductions and eliminating tariff peaks and tariff escalation on these products; - Developing countries must have differential commitments and modalities as appropriate, in the area of market access. In addition, developing countries must be allowed the flexibility to continue the application of special safeguards; - The GSP principles already encapsulated in the Enabling Clause should be elaborated and maintained in the framework of the Agreement, with an explicit commitment by developed countries to conform to the principles of non-discrimination and non-reciprocity. 		

Table 2
Mapping WTO negotiations according to ACP interests

<i>Interests of ACP</i>	<i>Elements of WTO Agricultural Negotiations</i>	<i>Selected Proposals Relevant to the ACP Interests</i>	<i>Issues to Explore</i>
Maintaining/increasing the ACP share in the EU market	<i>Market access</i> - tariff reduction and binding	<ul style="list-style-type: none"> - Eliminate tariff peaks and tariff escalation by applying harmonized tariff reduction formula. - Simplify the tariff structure by eliminating specific rates, variable rates and seasonal rates. 	<ul style="list-style-type: none"> - The ACP and other developing countries face a continual erosion of their preferential margins. Could this be challenged as a violation of Part IV of the GATT 1994 and the 1979 Enabling Clause? - Could another form of preferences to developing countries (e.g. technical and financial assistance to marketing efforts and product quality improvement) be provided, as a S&D provision, to compensate for a continual loss of tariff preferences?
	<i>Market access</i> - TRQs	<ul style="list-style-type: none"> - Increase the quota quantities progressively through the implementation period. - Ensure that (new) suppliers from developing countries should have equal access to allotment within the TRQs. - Enhance the TRQs administration methods of developed countries so as to improve developing countries' access to TRQs. 	<ul style="list-style-type: none"> - Whether the EU could be allowed to bind all the quotas under the Protocols would influence the continuation of the Commodity Protocols beyond 2007. - Could certain TRQs be earmarked for developing country exporters, especially to those which have been traditional recipients of trade preferences as a part of development cooperation programmes as a S&D treatment?
	<i>Export competition policies</i> - export subsidies	<ul style="list-style-type: none"> - Eliminate and prohibit exports subsidies. 	<ul style="list-style-type: none"> - Elimination of export subsidies may reduce the prices the ACP receives under the Sugar Protocol?
	<i>Domestic support</i> - reduction commitments and the Blue Box provision	<ul style="list-style-type: none"> - Substantially reduce the AMS support using a formula approach. - Eliminate the Blue Box provision. 	<ul style="list-style-type: none"> - Substantial cuts in domestic support and elimination of the Blue Box provision would require a massive CAP reform - how would it influence the Cotonou preferences on agricultural products?

.../ continued

<i>Interests of ACP</i>	<i>Elements of WTO Agricultural Negotiations</i>	<i>Selected Proposals Relevant to the ACP interests</i>	<i>Issues to Explore</i>
Diversifying the production and increasing supply capacity	Market access - tariff reductions	Eliminate tariff peaks and tariff escalation. Employ a sectoral approach (zero-for-zero) to complement across-the-board tariff reductions.	Could a sectoral approach be applicable to processed and semi-processed products of interests to the ACP? Instead of "zero-for-zero", why not provide a preferential treatment to developing countries, e.g. 0 per cent to developed countries and 5per cent to developing countries?
Food security and rural development	Domestic support	Abandon the three-Box approach and collapse all the domestic support into one total. Set the level of reduction proportional to the agricultural production value. Equal the target level of AMS to "a fixed per cent of a Member's total value of agricultural production". Modify the criteria of domestic support exempted from reduction commitments.	What are the types of measures that are currently not included in the AoA exempted (i.e. Green Box) measures, but pertinent to the ACP in light of product diversification and supply capacity improvement?
	Market access - Special and differential treatment	Developing countries may apply a "positive list" approach to agricultural liberalization (i.e. they may exclude basic staples or other products that are considered important for food security purpose). Developing countries may raise their tariff bindings on key products (for food security) if cheap imports threaten their domestic production.	
	Exportcompetition policies	Establish disciplines to export credits, insurance and guarantees so as to bring them into the same reduction commitments as export subsidies. Examine the export subsidy elements of food aid and STEs.	What are major areas of concern with regard to possible reductions in export credits, which are pertinent to the majority of the ACP that are either LDC or net food-importing developing country (NFIDC)?

VII. OPPORTUNITIES AND LIMITATIONS FOR TRADE IN AGRICULTURE UNDER THE COTONOU PARTNERSHIP AGREEMENT: ISSUES TO BE ADDRESSED AND OPTIONS TO BE CONSIDERED

Executive Summary

The conventional figure on the market access for ACP products under the past Lomé trade regime was that about 99.9 per cent of these products entered the EU market quota/duty-free. This percentage derived from a calculation which took as a reference actual ACP exports matched with the Lomé product coverage. According to this approach, the Cotonou Partnership Agreement (CPA) brings this figure to almost 100 per cent leaving little scope for any improvement of the current market access conditions. However, these figures do not take into account one of the most valuable indicators of the value of trade preferences: the utilization rate, i.e. the actual amount of trade that at the time of importation into the EU market actually received preferential tariff treatment. Unlike the GSP schedule of the EU and other schemes, utilization rates of ACP preferences are not made public. However, a comparison with the utilisation under the EU GSP scheme shows that in the period from 1996 to 1998 utilization rate ranged from 59.8 to 47.2 per cent.

This chapter argues that one of the most important aspects which ACPs should consider is making sure that their present and future tariff preferences are effectively utilized. Current preferences could and should be expanded to cover ACPs exports beyond the current level. Obviously, there are also areas where specific duties and entry prices still apply under the CPA. This chapter also identifies some products which are currently excluded from Cotonou preferential treatment or, where covered, are not granted duty-free treatment, and entry prices and specific duties still apply. Thus, one recommendation is that these products be included and be provided duty free treatment. However, it serves little purpose to offer additional preferential market access unless the problems affecting the real utilization of these preferences are solved. Another step for a plan of action is to consider the reasons behind the low utilization of the available preferences recorded so far. On the basis of an analytical review of current trade preferences, it has been found that ACPs might significantly gain from a full utilization of the “missed preferences” i.e. those preferences currently granted but not utilized because of the stringent conditions attached. This part of the chapter thus addresses the question of improving the utilisation and effectiveness of these trade preferences. It concludes by pointing out that in order to be really meaningful any negotiating objective to enhance market access for ACP countries’ exports should not only include ACPs products that do not benefit from any preferential treatment, but also provide for a wide reconsideration and possibly harmonization of the trade regulations, such as rules of origin and SPS measures to make them more accessible and user friendly to the supply capacity of ACP countries.

The EBA initiative recently proposed by the Commission appears to introduce substantive market access improvements for all LDCs by eliminating all duties, including specific duties and, although not confirmed, also the entry price system. However the proposal does not introduce any amendment in the field of rules of origin and, on the contrary, it does not grant any kind of cumulation for LDC countries.

Finally, the chapter considers against this background the possible options for negotiations by first indicating that these options should be viewed against the evolving trading environment, namely: (1) the WTO negotiations on agriculture and (2) the trade preferences granted by the EU under other trade arrangements to other trading partners, especially the EU GSP.

The chapter concludes by drawing a possible roadmap for consideration under which trade and non trade related aspects aiming at increasing market access for ACPs may be regulated by an *ad hoc* non-reciprocal EPA on tariff preferences, building upon the WTO-plus aspects raised by ACP countries during the preparations for Seattle. The elaboration of these aspects specially in the SPS area should be an element of priority for ACP countries in the near future. Under this option, tariff preferences of

the current Cotonou Agreement might be replaced by an enhanced GSP. In this latter case, the ACP countries should closely follow the forthcoming EU internal consultative mechanism on the future GSP to be renewed next June.

A. The Built-in Agenda of the CPA: New Trading Arrangements

The ACP-EU trade regime is bound to undergo a profound transformation. The trade arrangements under the Cotonou agreement are of a temporary nature and outline the path to be followed by the Parties to eventually establish trade relations that are legally compatible with the WTO system.

With a view to foster the smooth and gradual integration of the ACP countries into the world economy and, bearing in mind the need to bring the ACP-EU trade relations into full conformity with the WTO rules, the Cotonou agreement provides for negotiations of new WTO-compliant trading arrangements to start in September 2002 with those ACP countries which consider themselves to be in a position to do so, i.e. not necessarily all the ACP countries. The new arrangements will have the form of economic partnership agreements (EPAs), whereby the EU and those ACP countries that will enter into such a negotiating process agree to progressively remove barriers to trade between them, to establish a free trade area and, to enhance cooperation in all trade-related fields. This represents a major shift from previous unilaterally granted trade preferences. The Parties will regularly review the progress of the preparations and negotiations and a formal and comprehensive review of the new trading arrangements for all countries is scheduled in 2006. Building on existing regional integration initiatives of ACP States, negotiations will take into account the different levels of development and the socio-economic impact of the liberalization process on ACP countries. Therefore, while remaining in conformity with WTO rules, a high level of flexibility should permeate the negotiations on the establishment of the duration of a sufficient transitional period, final product coverage and the degree of asymmetry in terms of a timetable for tariff dismantlement.

In 2004, for those non-LDC ACP countries that decide that they are not in a position to negotiate EPAs, the EU undertook to study possible “alternative trade arrangements”, which have not yet been defined, that would anyway provide non-LDC ACPs with a new WTO-compatible framework equivalent to their present situation. One technically feasible solution lies with an improved GSP scheme – the current one is due for revision in 2001.

The agenda set up by the CPA has an evolving character since the EU Commission has recently put forward the “everything but arms” initiative which, if approved, would provide, as of 1 January 2001, duty-free access, without any quantitative restrictions, to all products (except those falling within HS Chapter 93) originating in all least developed countries, i.e. not only ACP LDCs. For three special agricultural products, namely bananas, sugar and rice, customs duties will be eliminated over a three-year period.

B. The Roll-Over of Lomé IV Trade Provisions: The Cotonou Preferential Tariff Treatment for Agricultural Products

In order to facilitate transition to the new reciprocal free trade arrangements, and until the EBA initiative enters into force for all LDCs, the Cotonou Agreement maintains the non-reciprocal trade preferences applied under the revised Lomé IV Convention during a preparatory period of eight years. The trade provisions of the Agreement entered into force on 1 March 2000 on the basis of the transitional measures adopted by the ACP-EC Committee of Ambassadors on 29 February 2000⁵⁰.

⁵⁰ See O.J. L 56, of 1 March 2000 and L 217 of 26 August 2000.

Exports from ACP countries into the EU amounted to US\$ 18.5 billion in 1998, of which 36 per cent entered this market already duty free (zero MFN tariff rate). The products composition of ACP exports to the EU is rather diversified as exports appear to be evenly distributed across all product categories (see table below). Most exported products are, among others, prepared foodstuff and beverages (mainly cocoa preparations and sugar) which account for 25 per cent of total ACP export into the EU followed by vegetable products (17 per cent) and products such as coffee, tea, fruits and nuts (alone these products make for roughly 80 per cent of this value) as well as fish and articles of wood (6 per cent and 5 per cent respectively).

Other important exports include basic metals, precious stone and mineral products (21 per cent of total ACP exports), chemical and plastics products (5 per cent), textiles and clothing (6 per cent) and transport equipment (8 per cent). Together with hides and skins (1 per cent), these items account for almost 95 per cent of total ACP exports to the EU.

As shown in the table below, a static assessment of the product coverage that the new Cotonou Agreement is potentially expected to provide for all ACPs' exports is close to 100 per cent (tariffs 2000, trade data 1998). Exceptions to this wide coverage are represented by cereals, beverages and edible preparations where a lower than average coverage rate is found even though their combined trade value is currently less than 2 per cent ACP exports. Overall the value of trade excluded by any preferences is just US\$1 million (trade 1998). The table also shows the current market access conditions in the EU for ACP exports in different scenarios had the ACP products been exported under the alternative GSP regime. Not surprisingly, the results confirm the more preferential market access conditions under the CPA in respect of the current ones under the GSP scheme. This finding is also reinforced by the fact that ACP trade under the alternative GSP scheme is negligible.

Table 1
Coverage of the ACP-EU Cotonou Partnership Agreement
(ACP exports in 1998, tariffs 2000)

HS SECTION	DESCRIPTION	VALUE OF 1998 IMPORTS (in millions of USD)						
		Total from ACPs	Duty Free	Dutiable	Covered by GSP scheme	Covered by ACP scheme	Not covered by ACP scheme (2000)	
01	Live animals & products	1,242	52	1,190	741	1,242	0	
02	Vegetable products	3,216	477	2,739	2,156	3,215	0	
03	Fats and oils	343	2	341	341	343	0	
04	Prepared foodstuffs, beverages, etc.	4,612	65	4,547	2,685	4,611	1	
05	Mineral products	939	814	125	0	939	0	
06	Chemical products	760	238	522	4	760	0	
07	Plastics & rubber	147	109	38	29	147	0	
08	Hides and skins, leather, etc.	259	77	182	5	259	0	
09	Wood & articles of wood	882	652	230	14	882	0	
10	Pulp of wood, paper, books, etc.	9	5	4	1	9	0	
11	Textile & textile articles	1,197	23	1,173	271	1,197	0	
12	Footwear, headgear, umbrellas, etc.	42	0	42	35	42	0	
13	Articles of stone, cement, etc.	5	1	5	3	5	0	
14	Precious stones, etc	2,415	2,385	30	1	2,415	0	
15	Base metals & products	645	248	398	22	645	0	
16	Machinery & electrical equipment	204	70	134	68	204	0	
17	Transport equipment	1,441	1,416	25	1	1,441	0	
18	Optical & precision instruments	75	16	58	31	75	0	
19	Arms and ammunition	0	0	0	0	0	0	
20	Miscellaneous manufactured articles	47	22	25	4	47	0	
21	Works of art, etc	6	6	0	0	6	0	
	TOTALS:	18,486	6,678	11,808	6,412	18,484	1	

Source: UNCTAD elaboration

Table 2
Main ACP Exporters in 1998

(Exports' share above 1% of total ACP exports)

Country Name	Value of Export in millions of US\$	Export share %
Nigeria	3,206,477	13.51
Cote d'Ivoire	2,540,348	10.70
Cameroon	1,592,838	6.71
Ghana	1,345,251	5.67
Mauritius	1,229,826	5.18
Gabon	926,567	3.90
Kenya	86,070	3.63
Congo, Democratic Republic of	820,097	3.46
Zimbabwe	779,843	3.28
Angola	655,784	2.76
Jamaica	578,310	2.44
Madagascar	524,982	2.21
Guinea	485,471	2.05
Senegal	474,637	2.00
Liberia	473,490	1.99
Congo, Republic of	431,398	1.82
Namibia	427,168	1.80
Trinidad and Tobago	392,691	1.65
Papua New Guinea	368,677	1.55
Bahamas	360,417	1.52
Mauritania	357,476	1.51
Ethiopia	315,997	1.33
Uganda	31,352	1.32
Dominican Republic	283,354	1.19
Tanzania	283,078	1.19
Sudan	267,638	1.13

Source: UNCTAD elaboration.

In terms of geographical composition of ACP exports, the main exporters⁵¹ are Nigeria and Ivory Coast, as together they account for 23 per cent of total ACP exports. The rest of ACP exports appears to be evenly distributed among all countries. Cameroon accounts for 6 per cent of total exports, and Ghana and Mauritius combined account for around 10 per cent followed by Gabon, Kenya, the Democratic Republic of Congo and Zimbabwe with roughly 3 per cent each. Finally, minor exporters are Angola, Jamaica, Madagascar, Guinea and Senegal, all of them recording some 2 per cent share in total ACP exports (see table 2).

The CPA provides, as the previous Lomé Convention, free access without quotas for all industrial products, including oil and mineral products (from HS Chapter 25 to 97). Similar treatment, i.e. duty free access, is provided for fish products (without the preferences, the trade weighed average 2000 MFN duty for fish would be 11 per cent⁵²), subject to specific rules of origin requirements, and for other agricultural products, except for agricultural and processed products subject to a Common Organization of the Market – listed in the “Joint Declaration concerning agricultural products”⁵³ appended to the Annex on the Trade Regime applicable during the Preparatory Period – and for

⁵¹ Trade data from 1998.

⁵² Please note that this trade weighed duty has been calculated utilizing LDCs export in 1998 only and not all ACP exports.

⁵³ See the “Joint Declaration concerning agricultural products referred to in Article 1(2)(a)”, containing the preferential treatment applicable to agricultural products and foodstuff originating in ACP States, Annex to Decision 1/2000 of the ACP-EC Committee of Ambassadors of 28 February 2000 on transitional measures valid from 1 March 2000, OJ L 217, 26 August 2000, p. 189 ff..

products subject to specific rules introduced as a result of the implementation of the Common Agricultural Policy. For these products, the Community undertakes to guarantee a margin of preference vis-à-vis MFN rates of duty granted to third countries.

A full picture of the extent and nature of the preferential margins enjoyed by ACP agricultural exports may only be obtained through a detailed analysis of the EU tariff structure, particularly those tariff lines at the 8-digit level that are not covered by the Cotonou treatment and those where only a reduction of duty, and not a full exemption, applies. Such detailed analysis of the 2000 MFN and preferential CPA rates for Chapters 1 to 24 shows that only about 850 product lines are either totally excluded from preferential treatment or only enjoy a reduction of duty (this calculation does not take into account all the tariff lines applicable to products subject to the entry price system which are several hundreds; to see a full list of these tariffs, refer to the Official TARIC 2000 of the EC). However, when calculated as the number of tariff lines at the 10-digit level this list may well exceed 5,000 TARIC lines (Taric is the integrated tariff of the European Community, published annually. It is based on the Combined Nomenclature (CN) which has some 10,000 headings (coded with eight digits) and which constitutes the basic nomenclature for the Common Customs Tariff as well as for trade statistics. Taric contains around 18,000 further subdivisions (coded with two extra digits or with an additional code) necessitated by tariff quotas, tariff preferences, the GSP, agricultural components, anti-dumping and countervailing duties, etc.). Such calculations are indicative given the complicated tariff structure of the EU for agricultural products containing seasonal duties, entry prices and additional components. Since these additional elements of the tariffs for these products are broken down at the 10-digit level, they may cover in some extreme cases, such as for certain vegetable products, over 30 pages of the tariff book.

The CPA has brought a slight improvement in the product coverage by extending preferences to a number of products previously excluded by Lomé. The approximate number of these products is 31 (the list might be longer as for some of the excluded products we could only check tariff lines at the 8 digit level) and they account for a trade value calculated at around US\$4 million in 1998. In particular, the bulk of this value is made up of a single HS 10 digit line, namely products like extracts, essences and concentrates, of tea or maté, and preparations with a basis of these extracts, which alone are worth US\$3.9 million. However the coverage of the CPA is not totally exhaustive.

There are also about 36 excluded products, i.e. those without any sort of preferences, and, when matched with trade, they account for an extremely small share of ACP exports (US\$1 million). For some other 80 products, preferences are only granted up to a certain quantity, while the majority of the remaining products face a combination of *ad valorem* and specific duties. For certain products, like tobacco, the EU reserves the right to apply countermeasures if deemed necessary. In addition, some 15 products, mainly fruits and vegetables as well as some processed products like fruit juices (these products are listed in the table below), are regulated by the entry price system (the actual number of tariff lines regulating these 15 products is in the order of several hundreds).

Table 3
Products regulated by an Entry Price System in the EU

HS Tariff Line	Description of the Products
0702 00 00	Tomatoes, (fresh or frozen)
0707 00 00	Cucumbers (fresh or frozen)
0709 00 00	Other legumes, (fresh or frozen)
0709 10 00	Artichokes
0709 90 70	Courgettes
0805 00 00	Citrons (oranges, lemons, mandarins etc. fresh or frozen)
0806 00 00	Grapes (fresh or dried)
0808 00 00	Apples , pears and quince (fresh)
0808 20 00	Pears and quince
0809 00 00	Apricots, cherries, peaches, prunes (fresh)
0809 20 00	Cherries
0809 30 00	Peaches
0809 40 00	Prunes
2009 00 00	Fruit Juices (also made of vegetables) without added alcohol, with or without added sugar or sweeteners
2204 00 00	Wines from fresh grapes and wines enriched with alcohol

The EPS trade regime has replaced the old reference price system as one of the results of the “tariffication” process carried out in the UR, whereby all no-tariffs measures had to be converted in bound tariffs. The EPS is a dual system where two separate sets of tariffs apply according to a core variable which is represented by the entry price. Applicable tariffs are either *ad valorem* or specific duties. In this system, as long as the c.i.f. import price of a particular product complies with the entry price (i.e. is either equal or higher) a “general” bound tariff applies. However, if the import price falls below the entry price, an additional duty is charged on top of the general one up to a maximum tariff level, including bound levels (the WTO schedule of the EU does not envisage anything about the application of the additional bound tariff i.e., the EU could in principle apply only a fraction of this additional rate and not the totality of it, although it should not be a higher one). In reality, the system is slightly more complex, since there are several entry prices for the same product, and for each of them a different additional duty applies. Although set *a priori*, entry prices change according to seasons, being lower during the harvest season in the EU so as to provide maximum protection to the EU local producers.

An example can better explain the overall system. In the case of courgettes, a vegetable product, entry prices and tariffs charged vary according to intervals of time throughout the year. For the year 2000 the time intervals have been set as follows: a) month of January; b) 1st of February–end of March; c) 1st to 20th of April; d) 21st April–end of May; e) 1st June–end of July; f) 1st of August–end of September and g) 1st of October–end of December. For each of them different entry prices and consequently different tariffs apply. The overall result is a matrix of three variables of the kind shown in the table below, where time and entry price are represented by the first horizontal row and vertical

column respectively, and the applicable tariff rate (MFN, ACP and LDCs GSP) is shown in the internal cells at the cross between time and entry price.

Table 4
Entry Price (EP) and tariffs for courgettes
(second semester of year 2000 only)

1st June-end of July 2000			
Entry price per 100kg :	MFN rate	GSP Rate for LDCs	ACP rate
EP of 41.3 EUR or more	12.8	0	0
40.5 EUR < EP <41.3EUR	12.8 + 0.8 EUR/100kg	0 + 0.8 EUR/100kg	0 + 0.8 EUR/100kg
39.6 EUR < EP <40.5EUR	12.8 + 1.7 EUR/100kg	0 + 1.7 EUR/100kg	0 + 1.7 EUR/100kg
38.8 EUR < EP <39.6EUR	12.8 + 2.5 EUR/100kg	0 + 2.5 EUR/100kg	0 + 2.5 EUR/100kg
38 EUR < EP <38.8EUR	12.8 + 3.3 EUR/100kg	0 + 3.3 EUR/100kg	0 + 3.3 EUR/100kg
EP < 38EUR	12.8+ 15.2 EUR/100kg	0 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg
1st of August-end of September 2000			
Entry price per 100kg :	MFN rate	GSP Rate for LDCs	ACP rate
EP of 48.8 EUR or more	12.8	0	0
47.8 EUR < EP <48.8EUR	12.8 + 1 EUR/100kg	0 + 1 EUR/100kg	0 + 1 EUR/100kg
46.8 EUR < EP <47.8EUR	12.8 + 2 EUR/100kg	0 + 2 EUR/100kg	0 + 2 EUR/100kg
45.9 EUR < EP <46.8EUR	12.8 + 2.9 EUR/100kg	0 + 2.9 EUR/100kg	0 + 2.9 EUR/100kg
44.9 EUR < EP <45.9EUR	12.8 + 3.9 EUR/100kg	0 + 3.9 EUR/100kg	0 + 3.9 EUR/100kg
EP < 44.9EUR	12.8 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg
1st of October-end of December 2000			
Entry price per 100kg :	MFN rate	GSP Rate for LDCs	ACP rate
EP of 48.8 EUR or more	12.8	0	0
47.8 EUR < EP <48.8EUR	12.8 + 1 EUR/100kg	0 + 1 EUR/100kg	0 + 1 EUR/100kg
46.8 EUR < EP <47.8EUR	12.8 + 2 EUR/100kg	0 + 2 EUR/100kg	0 + 2 EUR/100kg
45.9 EUR < EP <46.8EUR	12.8 + 2.9 EUR/100kg	0 + 2.9 EUR/100kg	0 + 2.9 EUR/100kg
44.9 EUR < EP <45.9EUR	12.8 + 3.9 EUR/100kg	0 + 3.9 EUR/100kg	0 + 3.9 EUR/100kg
42.4 EUR < EP <44.9EUR	12.8 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg
41.6 EUR < EP <42.4EUR	12.8 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg
40.7 EUR < EP <41.6EUR	12.8 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg
39.9 EUR < EP <40.7EUR	12.8 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg
39 EUR < EP <39.9EUR	12.8 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg
EP < 39 EUR	12.8 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg	0 + 15.2 EUR/100kg

Source: UNCTAD elaboration from TARIC 2000.

The preferences granted to either ACP or LDC GSP, apply to the *ad valorem* component of the duty only. However, and as shown in the following table, it is largely the specific component that constitutes the bulk of the protection and not the *ad valorem* part. The combined tariff for artichokes (in that period of time, taking the lowest entry price) is 54 per cent against a “pure” MFN rate of 1 per cent. Thus, although this products is one of the covered products (i.e. part of the 99.9 per cent coverage rate) and receives a “preference”, ACP exports of artichokes may face a duty of 44 per cent. Similarly exports of courgettes may face a duty of 44 per cent, 60 per cent for tomatoes and a “three

digit tariff' on cucumbers. Obviously these are extreme examples, however they are also useful to get a complete picture of the current market access under the CPA.

Table 5
MFN product tariffs for selected products in selected periods of time

Product	Lowest Entry Price (EUR/Tons)	Ad valorem MFN tariff (%)	Max Tariff (EUR/Tons)	Combined tariff (2+(3/1) (%)
	1	2	3	4
Artichokes November/December 2000	52.5	10.4	22.9	54.02
Courgettes August/September 2000	44.9	12.8	15.2	46.65
Cherry Tomatoes June/September 2000	48.8	14.4	29.8	75.47
Cucumbers 15May/September 2000	32.2	16	37.8	133.39

Source: UNCTAD Calculation; Note: Combined tariff is calculated by retrieving the incidence of the max tariff as a proportion of the entry price (column 3 divided by column 1) and then add this result to the *ad valorem* tariff in column 2.

Neither ACP countries nor LDCs have been granted special preferences for all the products subject to the EPS or on the specific duties component of the tariff. Under the Euro-Mediterranean agreements with Morocco and Israel the EU has granted reductions of entry prices subject to quota levels on some products for Morocco and oranges for Israel. Bearing in mind the functioning of the entry price system, this preferential margin may result in being the most effective, since these countries will be effectively able to undercut the supply price of all the other suppliers. This finding appears to confirm that preferences under the NPA may be improved.

For certain categories of processed agricultural products of HS chapter 4 products (milk and milk products) 17 (sugar and sugar confectionery), 18 (cocoa and cocoa preparations), 19 (processed foodstuffs), 20 (beverages) and 21 (miscellaneous edible preparations), the EU maintains a system of a combined tariff i.e. a combination of ad valorem and specific duties according to the quantities of sugar, starches or glucose and milk fat or proteins contained in the products.

The EPS system is particularly complex, since the level of specific duty varies depending on the percentages of these products contained in the finished products (for instance biscuits may contain different percentages of milk, flour and sugar). In some cases the preferences granted to ACP countries cover the ad-valorem and the specific duty of the agricultural component. In other cases the preferences cover only the ad valorem component of the duty. As before, it is very likely that the specific duty may be considerably higher than the ad-valorem percentage. However, only a tariff by tariff line analysis may provide some useful insights and examples of such variations on preferential tariff treatment and suggestions on ways and means of improving market access for ACPs.

C. The Value of Trade Preferences under Lomé and the CPA: A Tentative Assessment - The Issue of Utilization of Trade Preferences

The EU has been traditionally regarded as offering the most generous market in terms of the preferential access provided for ACP exports in comparison to the other preferential schemes analysed by this study.⁵⁴ In the case of the Lomé preferences, the traditional product coverage figure has been reportedly close to 99 per cent. The Cotonou Agreement appears to follow the same pattern of the

⁵⁴ At the time of writing, the UNCTAD Secretariat had not received any information from the EC regarding the utilization rate for ACP products imported in the EC under the Lomé preferences.

previous Lomé Convention by providing a roll-over of the trade preferences granted previously. This comprehensive product coverage appears to strengthen the view that the low supply capacity of the ACP countries was the explanation for the low impact of the Lomé trade preferences and that further improvement of market access to ACP States was unlikely to achieve substantial results or was redundant. Although this argument may remain valid to some extent, there is substantial scope for further improvement of the market access traditionally granted under the Lomé regime, provided that further qualifications are made to the nature of the preferences. The market access provided by the Lomé/Cotonou regime is not as comprehensive as it seems at a cursory glance.

In conducting an analytical examination of the benefits from the trade preferences, several substantive factors have to be taken into consideration in measuring trade preferences and the market access effectively provided by them. The analysis of the market access conditions of the EU market is considerably different and more complex than any other similar attempt conducted on the tariff schedules of other industrialized countries. The extreme complexity of tariffs, entry prices and specific duties coupled with significant annual changes in the Combined Nomenclature make any assessment of the trade preferences extremely difficult and time-consuming. For instance, in a more extensive UNCTAD study on improving market access for LDCs, an attempt, as in the case of other schemes of the Quad countries, to simulate a trade creation on the uncovered products in the EU market was not conducted, since either the Cotonou Agreement and the GSP for LDCs appear to provide a trade weighted coverage rate close to 100 per cent. In this scenario, little gains if any are likely to be expected from such an exercise⁵⁵.

However, this finding should not be interpreted to mean that there is no scope to improve market access in the EU beyond the current level. On the contrary, an analysis based on the current utilisation made of the different preferences granted to ACP countries by the EU seems to demonstrate that there is still much scope to substantially increase the market access conditions currently granted to ACP countries. This poses the question of how significant these “hidden gains” are and how to calculate them.

The analysis of the market access conditions for ACP countries has been traditionally conducted on the assumption that the trade preferences granted under the different preferential arrangements were fully effective and utilized. This assumption implied that MFN tariffs were not representing substantial trade barriers for exports from ACP countries and were seldom applied to their exports. Such an analytical framework however, largely ignores substantial underpinnings and mechanisms regulating the effective functioning of trade preferences. However, findings in previous UNCTAD studies analysing individual preferential arrangements under the GSP system and Lomé, indicate that even when a wide coverage suggests potential benefits for preferential market access to ACP countries, their actual utilization may be particularly limited. When assessing the trade value of preferences, one of the first criteria for quantification is the utilization rate, i.e. the trade value of the goods which actually received preferences at the port of entry⁵⁶. This is the most realistic measurement of the effectiveness of trade preferences. Unfortunately, data required to calculate the utilization rate for ACP countries under the Lomé/CPA is not publicly available. However, as a rule of thumb, it appears reasonable to assume that it might be very much in line with that achieved by other similar beneficiary countries under the EU GSP scheme, since both arrangements share similar requirements and levels and complexity of duties.

More importantly, in the absence of trade data on the utilization rate of these preferences and where such utilization is rather low as in the majority of cases, considering the ratio of the potential product coverage as a measurement of the effectiveness of the preferential arrangements might be misleading. Failure to comply with the different requirements and rules of origin under the different arrangements, and therefore losing preferences, means MFN rates will be applied to ACP countries’

⁵⁵ The results of that study confirm the expected limited gains.

⁵⁶ The utilization rate is the ratio of the amount of imports which actually received trade preferences to the amount of dutiable imports eligible for preferences.

exports. For example, although the EU GSP provides a coverage close to 100 per cent, non-ACP LDCs⁵⁷ have paid, and are still paying, a trade weighted MFN duty above 10 per cent⁵⁸ on three quarters of their textiles and clothing exports, around 11 per cent for half of their fish exports (it is above 20 per cent for food preparations made of fish and crustaceans), above 20 per cent for 60 per cent of their preparations from fruit (HS Chapter 20) and around 15 per cent for almost the totality of their trade in live trees, bulbs, roots and flowers. The same rationale might well be applied to ACP country exports.

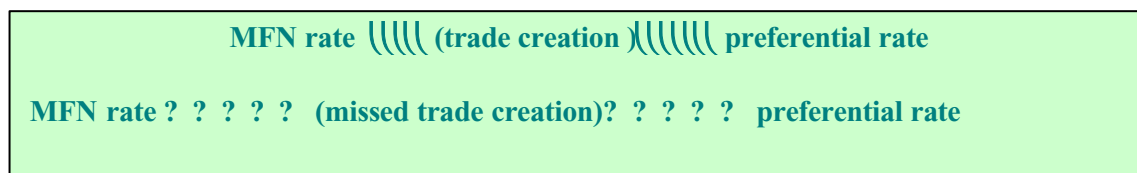
In the absence of such detailed trade figures on the utilization rate of Lomé preferences, a useful comparison may be drawn from the utilization of the EU-GSP. Based on this assumption, since the utilization rate of the agricultural products in the EU GSP scheme is equivalent to roughly 50 per cent on average (average GSP utilization rate for the years 1996, 1997 and 1998), the same may be applied as a rule of thumb to the Lomé agricultural trade preferences. Thus, it may be reasonably argued that while potential coverage may be equivalent to 99 per cent, the actual amount of exports which have effectively received the preferences is just half of the 99 per cent figure. Hence, the issue that needs to be focused on is the reason why there is such a low utilization of trade preferences, rather than the potential product coverage of nearly all products.

The trade coverage provided by the Conventions and currently by the CPA is comprehensive but not universal of the applicable tariff of the European Union. Actual trade figures matched with product coverage of the products actually exported by ACP countries may provide high figures. However, such a static approach is limited to one dimension of market access. It remains to be considered what could have been achieved in terms of export growth had market access been effectively open.

D. The Value of the "Missed Preferences" in the EU Market

The following analysis attempts to quantify the value of ACP trade towards the EU that potentially could take place in a scenario of full utilization. Since preferential rates are not fully applied in practice, an attempt to simulate these possible gains may assume a full liberalization of MFN rates as the starting point of the analysis rather than the preferential ones. As the analysis of the current trade flows has shown, the low utilization rate recorded indicates that in certain chapters and sectors of the HS it is largely the former and not the latter that is applied to ACP countries' exports.

As much as the assumption that the MFN rate was no longer applicable to LDC exports has led to the expectation of trade creation (the movement of trade from a MFN to a preferential regime), it may be conversely considered that a calculation based on MFN tariffs would provide an indication of the value of the missed trade. If so, by failing to qualify a product for a preference and thus moving back to the normal MFN rate, ACP countries export less.



Clearly some trade already benefits from the ACP preferences and this is given by the utilization rate. So the results obtained by this exercise have been deflated by that part. In order to apply an appropriate deflator, an average of the utilization rate for the effective beneficiaries of the EU GSP

⁵⁷ Non ACP LDCs are the effective beneficiaries of the GSP as ACP LDCs mainly under the Lomé regime.

⁵⁸ Duty from 1999, trade 1996 (and in some cases from 1997).

preferences has been calculated for each product section from 1996 to 1998. Thus, the final figures provide the real net gains, in term of export revenues ACP countries would possibly derive if the available preferences were fully utilized⁵⁹.

The table below contains the results of the simulation for ACP exports to the EU market broken down at a HS section level of aggregation under the Lomé/Cotonou Agreement. The results, although substantive, may be an underestimation of the benefits likely to stem from full utilization because only *ad valorem* duties could be accounted for⁶⁰. Given the relevance of specific duties in the agricultural sector this factor has to be given due consideration (A similar qualification could be extended to the analysis of the Japanese market).

It appears that ACP countries could see their export increasing by some 10 per cent from a full utilization of the Lomé/Cotonou Agreement equal to almost one billion US\$. Large increases are expected for textiles and clothing products (+35 per cent) and footwear, plastic and rubber products (+10 per cent each). Export expansion of agricultural products are also significant. Prepared food products are bound to raise by 8 per cent and a similar figure is found for products of animal origin such as meat and fish. The expected increases in export of fats and oils (+8 per cent) and vegetable products (+3.5 per cent) are also noteworthy. The gains for mineral and chemical products (+5 per cent each) also appear to be consistent.

Table 6
Possible export expansion from a scenario of full utilisation (selected sections)
(exports 1998, MFN tariff 1999)

HS Section	Description	Imports from Region Total	Imports from Region Duty free	Imports from Region Dutiable	Deflationary factor	Trade Creation Effect	Trade Diversion Effect	Total Trade Effect	Total Trade Effect as a % of current dutiable export
01	Live animals & products	1,241,560	51,821	1,060,146	65.2%	41,070	45,322	8,692	8.15
02	Vegetable products	3,215,829	476,879	2,231,140	58.2%	31,909	41,242	73,151	3.28
03	Fats and oils	343,123	1,779	341,312	36.5%	14,045	13,224	27,269	7.99
04	Prepared foodstuffs	4,611,539	64,547	2,774,323	38.5%	12,599	111,471	233,070	8.40
05	Mineral products	939,135	814,274	124,268	41.4%	2,691	4,087	6,778	5.45
06	Chemical products	759,658	237,629	52,016	54.9%	19,579	11,193	30,772	5.89
11	Textile & textile articles	1,196,568	23,390	1,173,178	35.5%	273,619	142,172	415,791	35.44
15	Base metals & products	645,414	247,763	397,651	61.6%	9,955	14,000	23,955	6.02
16	Machinery & electrical goods	203,682	55,409	144,318	24.5%	4,904	4,065	8,969	6.22
	TOTALS:	18,485,754	662,206	9,396,565	44.2%	536,037	396,886	932,923	9.93

Source: UNCTAD Calculations. Note: The deflationary factor is the average utilization rate recorded for LDCs and Non-LDCs exports (in each product section) under the GSP scheme of the EC in 1996-1997-1998. The trade effects results appearing in the tables have been deflated by this factor.

⁵⁹ The "cost" of not fully utilizing the preferences has been retrieved by calculating the trade creation effects in a case where all the covered dutiable products would move from a MFN rate situation to full duty free market access without considering the existence of preferential schemes. These results would not be complete without deducting the percentage of trade actually receiving preferences i.e. the utilization rate. The remaining is the value of trade of the missed trade preferences i.e. what ACP countries could potentially gain from a condition of full utilization of the preferential schemes available to them. The reader might refer to the study "Improving market access for LDCs" UNCTAD 2000 for a full explanation of the methodology used.

⁶⁰ Given the widespread use of specific duties in these markets the assumption of an underestimation of the final results appears reasonable.

E. A Tentative First Assessment of the Trade Effects of EBA

The European Commission has recently put forward a proposal for an amendment to the basic GSP Regulation⁶¹. The Commission's proposal aims to grant duty-free, quota-free access to all products, except arms and munitions of HS Chapter 93, which originate in all LDC beneficiaries. A comprehensive list of products to be liberalized under the EBA initiative has been published on the EU Web Site in a separate document.⁶² Such list contains all the products (except HS Chapter 93) that have so far been subject to (reduced) *ad valorem* and/or specific customs duties. The Commission's proposal would also do away with the complex entry price system.

Under EBA, customs duties applying to bananas, rice and sugar (codes 08030019, 1006 and 1701) will be phased out over a period of three years, starting on 1 January 2001. Customs duties on these products will be reduced by 20 per cent in the first year, by 50 per cent in the second year and by 80 per cent in the third year, thus reaching full elimination on 1 January 2004. The Commission's proposal also contains an Annex that is meant to replace Part IV of Annex VII to Regulation 2820/98, on non-sensitive products. If the EBA initiative is approved, the amended Annex VII to the basic GSP regulation will then only be applicable in the context of the special arrangement supporting measures to combat drugs (special additional preferences for ANDEAN and CACM countries).

Taking into account that under the Cotonou Agreement products covered by the CAP still face customs duties, the EBA initiative - once approved - would make the EU GSP for LDCs a more favourable scheme in terms of tariff treatment and product coverage than the preferential trade arrangement under Cotonou. In order to protect Community interests from risks of fraud and failure to comply with origin requirements, the Commission has proposed to strengthen existing safeguard measures, by providing for tariff preferences to be temporarily suspended "in cases of fraud, failure to adhere to origin rules and/or huge increases in imports into the Community beyond the usual output or export capacity of the LDCs concerned".

The new proposal does not include any amendment to existing EU preferential rules of origin applicable to GSP imports, as contained in Reg. 1602/2000 (OJ L 188, 26.07.2000). The Commission stressed that there was no need to tighten origin requirements, since these already provide for all instruments to enforce the rules and prevent distortions of trade. Furthermore, it is stated by the Commission that the establishment of rules of origin specifically for LDCs would be inconsistent with the EU efforts of harmonizing and simplifying the various sets of rules of origin in force under the different trade arrangements entered into by the Community.

An important implication for least developed countries deriving from the future implementation of the EBA initiative is linked to the different cumulation systems available under the GSP and under Cotonou. It is obvious that, on the one hand, if an ACP LDC desires to take advantage of the EBA duty/quota-free treatment, it will have to do so as a GSP beneficiary and thus it will lose the opportunity of fully cumulating with its ACP partners - an opportunity that is only available as a party to the Cotonou Agreement. On the other hand, if an ACP LDC wants to take advantage of the more favourable Cotonou cumulation system, it will have to face the Cotonou customs duties and quantitative limitations where applicable.

Along the same line of reasoning, LDCs will have to bear in mind that, the EBA initiative being an integral part of the EU GSP scheme, such duty/quota-free treatment will be subject to all the disciplines and various limitations of the scheme, such as the unilateral and unbound character of the GSP, its limited time-frame, and the possibility of temporary withdrawal of the preferences (article 22 of Regulation 2820/98, especially reinforced by the EBA proposal itself) and its rules of origin. A simulation, using the same methodology, has been carried out to quantify what LDCs could gain

⁶¹ See <http://www.europa.eu.int/comm/trade/miti/devel/eba.htm>.

⁶² See http://www.europa.eu.int/comm/trade/miti/devel/index_en.htm.

from full utilization of the EBA preferences in the EU market (partially extracted from an UNCTAD (2002) study on "Improving Market Access for LDCs). In practice, to calculate the impact of EBA on LDCs exports, the analysis divides LDCs currently trading under the ACP from non-ACP LDCs (Asian LDCs).

The table below contains the results of the simulation for LDCs exports to the EU market broken down at HS section level of aggregation for the two LDC groups. The results, although substantive, may be an underestimation of the benefits likely to stem from a full utilization because the specific component of the duties could not be accounted for (given the widespread use of specific duties in these markets, the assumption of an underestimation of the final results appears reasonable). ACP-LDCs could see their exports increasing by almost 1 per cent from a full utilization of EBA, while this figure is more than double for non-ACP LDCs (+40 per cent). As far as the former group of LDCs is concerned, large increases are expected for both agricultural (45 per cent of the total result) and textiles and clothing products (40 per cent). ACP-LDC exports of food products are likely to increase by 25 per cent, while this figure is around 16 per cent for fats and oils. These sectors are particularly important for LDCs industrial development needs since they may potentially generate industries processing raw agricultural materials to higher value added products. Significant gains are also recorded for live animals and meat (+12 per cent) and for vegetables (almost 4 per cent).

Table 7
Possible export expansion for LDCs deriving from a full utilisation of the preferences available under EBA (thousands of US\$)

HS Section	Description	ACP LDCs (trade 1998)			Non-ACP LDCs (trade 1998)		
		Imports from ACP LDCs Dutiable	Possible export expansion in US\$	Possible export expansion as a % of dutiable exports	Imports from Non ACP LDCs Dutiable	Possible export expansion in US\$	Possible export expansion as a % of dutiable exports
01	Live animals & products.	421,225	53,035	12.59	123,742	18,917	15.29
02	Vegetable products	932,964	35,925	3.85	30,196	1,980	6.56
03	Fats and oils	72,075	11,521	15.99	58	18	31.00
04	Prepared food	123,723	31,532	25.49	23,73	11,892	50.88
05	Mineral products	3,325	133	4.01	13,537	624	4.61
06	Chemical & prod.	18,703	2,060	11.02	4,172	741	17.76
07	Plastics & rubber	704	106	15.00	2,127	389	18.30
08	Hides and skins	38,087	428	1.12	74,244	1,886	2.54
09	Wood and articles	23,302	914	3.92	10,083	387	3.84
10	Pulp, paper etc	1,435	59	4.12	250	12	4.71
11	Textile & articles	289,966	116,301	40.11	2,270,335	1,075,215	47.36
12	Footwear	9,893	403	4.07	59,381	6,648	11.20
13	Articles of stone	869	8	0.92	9,177	338	3.68
14	Precious stones	1,259	139	11.03	134	19	14.44
15	Base metals & products	14,83	767	5.12	2,352	312	13.28
16	Machinery	34,597	2,903	8.39	16,924	1,825	10.78
17	Transport equipment	5,240	1,087	20.74	4,253	1,825	42.91
18	Precision instrument	19,726	3,198	16.21	2,915	396	13.57
19	Arms and ammunition	1	0	0.00	0	0	0.00
20	Miscellaneous	6,539	626	9.57	9,066	869	9.58
21	Works of art	0	0	0.00	0	0	0.00
TOTALS		2,018,616	290,016	14.37%	2,656,319	1,108,568	41.73

Source: UNCTAD Elaboration

For manufacturing and minerals, the simulation forecasts a consistent export expansion of T&C products (+40 per cent for both LDCs groups) followed by precious stone and articles therein, machinery, transport equipment and footwear. However, the combined trade value of these latter products is currently limited. Other minor exports likely to benefit from full utilisation of the EBA preferences are prepared food and live animals and meat. (+1.7 per cent and +1 per cent respectively).

In the case of non-ACP LDCs, the full utilization of EBA could bring an overall export expansion in the region of 4 per cent their current level of dutiable exports. The most significant result is the large increase in T&C exports (in the order of US\$ 1 billion), thus demonstrating the existence of consistent gains. Much of this export expansion is conditional to the fulfilment of the requirements regulating the preferential market access of these products as well as LDCs supply capacity. Other significant expansions are recorded for prepared food (+50 per cent) and fats and oils, but the absolute value of these products is limited. In absolute value, LDCs (both ACP and non-ACP) could potentially increase their exports of roughly 30 per cent of their current level (ACP dutiable exports only) with T&C making up for the a large proportion of it (above 80 per cent).

F. The Rules of Origin Applicable during the CPA Preparatory Period

General

The rules of origin applicable to products exported by ACPs are contained in Protocol 1 to the Annex on the 2000-2007 trade regime. Such products are considered as originating in ACPs (1) if they are “wholly obtained” in ACP States or (2) if they have undergone sufficient working or processing in such countries, according to the comprehensive list of conditions set out in Annex II to the Protocol. The use of a comprehensive list of product-specific rules of origin represents a marked change from the basic structure of the origin rules under Lomé and is in line with the tendency of the EU to harmonize and consolidate its multiple sets or rules of origin. The model followed by the EU Commission is the structure of the South Africa-EU FTA origin rules⁶³.

Under the Lomé Origin Protocol, the basic origin criterion for products was the change-of-tariff-heading (CTH) rule (which allows for the utilization of foreign inputs, i.e. purchased outside the EU-CP group, provided the 4-digit HS code under which the export is classified is different from the 4-digit HS code of any of the non-originating inputs). The general CTH rule was coupled with a list of product-specific rules of origin, which laid down, for the included products, the working and processing to be carried out on non-originating materials. The general CTH requirement applied whenever a product was not mentioned in such list of exceptions. Under the South Africa-EU FTA, by contrast, the fundamental building block is a comprehensive list of product-specific rules of origin, whereby all products are covered and all origin requirements are specifically identified. The origin requirements are expressed in the form of a particular working or process that must be undertaken, or the specific inputs that must be already originating, or the tariff headings that must be jumped or of the value added that is required. The shift from the CTH/exceptions structure to a comprehensive set of product-specific rules has also characterized the July 2000 revision of the rules of origin applicable under the EU GSP scheme⁶⁴.

Cumulation Systems

The Cotonou trade regime maintains the Lomé full cumulation system and donor country content, which allow an ACP State to regard products that are wholly obtained in the Community, in the OCT

⁶³ See Protocol 1 to the EU-South Africa Agreement on Trade, Development and Cooperation, Council Decision 1999/753/EC, O.J. L 311, 4 December 1999.

⁶⁴ See Commission Regulation 1602/2000, 26 July 2000 (OJ L188, 26.07.2000, p.1).

or in other ACP States as having been wholly obtained in the exporting ACP State. In addition, working or processing carried out in the Community, in the OCT or in other ACP States is regarded as having been carried out in the exporting ACP State. For the purposes of origin determination, all ACP States are considered as being one territory.

ACP countries are also granted an expansion of the concept of regional cumulation through the inclusion of “*neighbouring developing countries belonging to a coherent geographical entity*” (Article 6, paragraph 11, of Protocol 1). This vague expression is better qualified in the Joint Declaration on cumulation (Annex XV Protocol 1), which states that:

“The Contracting Parties agreed that, for the implementation of Article 6(11) of Protocol 1, the following definitions shall apply:

- *‘developing country’: any country listed as such by the Development Aid Committee of the OECD and the Republic of South Africa except the High Income Countries (HIC) and the countries with a GNP exceeding in 1992 100 billion dollars at current prices;*
- *the expression ‘neighbouring developing country belonging to a coherent geographical entity’ shall refer to the following list of countries:*
 - *Africa: Algeria, Egypt, Lybia, Morocco, Tunisia and on an ad hoc basis South Africa;*
 - *Caribbean: Colombia, Costa Rica, Cuba, El Salvador, Guatemala, Honduras, Nicaragua, Panama and Venezuela;*
 - *Pacific: Nauru”*

Other conditions apply to this expansion of the cumulation concept:

- The concession is applied at the request of the ACP States concerned, and unless there is a specific request for deferral to the ACP-EC Council of Ministers, the ACP-EC Customs Cooperation Committee is in charge of taking the decision (Article 37, Protocol 1).
- The working and processing carried out in the ACP States must go beyond what are considered as “minimum working or processing operations” (such operations are listed in Article 5 of the Protocol).
- Textile products classified in HS Chapters 50 to 63 must, in addition, undergo at least working or processing as a result of which the products obtained achieve a change of tariff heading.
- However, for selected textile products, only the specific working or processing laid down in Annex IX to Protocol 1 must be carried out in the ACP States.
- Certain textile products, such as jerseys, pullovers and men’s or boys’ woven breeches (see Annex X to Protocol 1), together with tuna products classified under HS Chapter 3 or 16 and rice products of HS code 1006, are excluded from this kind of regional cumulation.
- Finally, to correctly implement this special cumulation system, the necessary adequate administrative procedure between the ACP countries, the Community and the other countries concerned must have been established.

A qualified cumulation system is allowed with South Africa. According to the discipline provided in Article 6, paragraphs 3 to 10, whenever materials originating in South Africa (the cumulation is only applicable if the South African materials have acquired the status of originating products by the application of rules of origin identical to those set out in the Cotonou Protocol) are used in the manufacture of a product in an ACP State, such materials are regarded as originating in the ACP only if the value added there exceeds the value of the South African materials. If this is not the case, the product concerned shall be considered as originating in South Africa.

Working and processing carried out in South Africa shall be considered as having been carried out in another Member State of SACU, when the materials undergo subsequent working and processing

there. At the request of an ACP State, the same rule shall apply whenever the materials undergo subsequent working and processing in an ACP country within the context of a regional economic integration agreement (the decision on the ACP request shall be taken by the ACP-EC Customs Cooperation Committee, unless there is a request for referral to the ACP-EC Council of Ministers).

The Protocol contains a series of Annexes that qualify the product coverage of the ACP/South Africa cumulation system in order to make it compatible with the provisions under the South Africa-EU FTA Agreement. In particular, the cumulation system will only be applicable for selected products (Annex XI and XII) and, after the expiry of a certain period of time (three and six years respectively) in connexion with the implementation of the South Africa-EU FTA Agreement. Notwithstanding the latter provision, cumulation in respect of such products may be applied at the request of an ACP State. The decision shall be taken by the ACP-EC Committee of Ambassadors, bearing in mind the risks of circumvention of the trade provisions under the South Africa-EU FTA Agreement. Annex XIII to the Protocol contains a negative list of products to which the cumulation system is not applicable. Furthermore, the cumulation shall not apply to certain fish products listed in Annex XIV, pending the elimination of customs duties on these products in the framework of the South Africa-EU FTA Agreement.

G. Conclusion

ACP States should consider that market access for agricultural products in the European Union is a moving target since the on-going negotiations in WTO are more importantly the negotiations of new free trade agreements by the EU with other partners and, may substantially affect the negotiating scenario. In all cases, ACP states should focus on improving utilization of available and possibly improved tariff preferences. Supply constraints may hamper this possibility. However, the utilization rate of the GSP scheme shows that even before supply constraints limit the ability of utilizing the trade preferences, there might be a rather substantial amount of trade which is not receiving preferential tariff treatment or, is not totally liberalized.

A combination of factors such as rules of origin in the processed food stuff sector, ancillary documentary requirements, lack of knowledge of relevant regulation in the EC market is the reason for low utilization. ACP states should closely look into the other trade and trade related aspects governing market access conditions in the European Union and, the possibility provided in the CPA in the future trade arrangements of ancillary legislation further liberalizing certain important aspects of market access, such as derogations on rules of origin, or enhancing cooperation with the EU on SPS measures (example of Namibia). Useful experience may be drawn from other trade arrangements entered by the EU with other trading partners. Morocco and Israel negotiated lower entry prices for some agricultural products during the negotiations of the Euro-Mediterranean agreements.

Another important aspect which ACP States may introduce into their negotiating agenda is to adopt a kind of “mirror negotiating attitude” to the one adopted by the EC during the negotiation of economic partnership agreements with other third countries. Second generation EU Agreements with third countries contain disciplines which extend beyond tariff liberalization on trade in goods encompassing provision for the harmonization of legislation, technical assistance, trade in services, competition rules, state aids, IPRs, etc. In some of these trade and trade related aspects, the experience of previous negotiations tends to indicate that the EU is aiming to obtain WTO plus commitments or to enhance certain areas. Rules on competition law and reaffirmation of the highest standards of IPRs’ protection may be examples of some of the WTO-plus and WTO-beyond areas in the Euro-Mediterranean agreements.

ACP states should select areas of these WTO-plus and WTO-beyond disciplines where they could identify negotiating objectives and strategies of interest to them. Obtaining better access for agricultural products, a sort of SPS-plus in favour of ACP states, could improve substantially the

market access beyond the extent of any tariff preference. Following this approach, it may be considered in the light of the evolving scenario, if the maintenance of the preferential margin on tariff preferences for agricultural products will be sustainable in the medium term. In this context, monitoring WTO negotiations and EU negotiations with other trading partners, especially MERCOSUR, will be of particular relevance. The current revision of the EU GSP scheme may bring useful insights on the future shape of GSP options for those ACP states who may not wish to join economic partnership reciprocity agreements (EPAs).

A two tier approach, which may be explored depending on the evolution of these variables, is to maintain an acceptable level of preferential margin on tariff preferences through a revised and, where possible improved GSP. Other trade and trade related interests identified by ACP States may be accommodated in a non-tariff reciprocal EPA containing WTO-plus and WTO-beyond disciplines drawing from experience gained by other former negotiating partners of the EU.

PART II

ALTERNATIVE TRADING ARRANGEMENTS:

OPTIONS AND CURRENT EXPERIENCES

I. A SOUTH AFRICAN PERSPECTIVE ON TRADE NEGOTIATIONS WITH THE EUROPEAN UNION: THE SA-EU TDCA AND THE SADC TRADE PROTOCOL

A. The Trade, Development and Cooperation Agreement (TDCA)

Background

On 15 April 1994 the final document on the General Agreement on Tariffs and Trade was signed by 117 nations at a ceremony in Marrakesh, Morocco to celebrate the end of the most comprehensive and contentious round of negotiations. The conclusion of the Uruguay Round coincided with the birth of a new democratic South Africa on 27 April 1994 when the first free and fair elections were held. Trading nations at this time were preparing themselves for the implementation of GATT and South Africa was not an exception. However, to re-integrate into the world economy as a trading nation South Africa needed to urgently spur her economic growth by attracting investments. In this regard the newly elected government decided that to facilitate investment inflow it should foster trade by securing long-term market access arrangements and implement GATT provisions such as tariff liberalization, and the elimination of non-tariff barriers to trade.

To secure market access for her goods and products, South Africa (SA) needed a partner. Historical and economic ties rendered the European Union (EU) an obvious choice for negotiating a long-term market access agreement. It took almost four years of negotiations to reach a conclusion.

The SA-EU Trade, Development and Cooperation Agreement was a historical milestone. For South Africa, the agreement marked not only the end of high tariffs and the demise of an economic strategy based on import substitution - characteristics of the Apartheid era - but it also served to accelerate the re-integration of South Africa into the world economy. On the EU side, the TDCA is the first agreement negotiated by the European Community with a third country after the Marrakech Agreement where the World Trade Organization (WTO) was formally established and global trade rules refined.

Notwithstanding South Africa's need for markets, she was also not oblivious to the fact that establishment of the WTO marked the beginning of a new impetus by the world economic order to end preferential trade. The window of opportunity brought by preferential trade was therefore beginning to close. Despite these developments at the multilateral stage, the unilateral trade regime of the Lomé Convention prevailed, thus providing a basket of opportunities for its members. It was for this reason *inter alia*, that South Africa wanted to accede to the Lomé Convention.

The Process Leading to Negotiations

In April 1994, the world witnessed South Africa's first democratic elections. On 18 April 1994, the EU Council of Ministers called for a package of measures to support South Africa's transition to a democracy. The Council recognized the importance of trade and market access as instruments to facilitate South Africa's re-integration into the global economy. To this end, it proposed that South Africa be included in the Generalized System of Preferences (GSP) in the short term, with an offer to negotiate a long-term trade and cooperation agreement with the EU.

Encouraged by this offer, South Africa requested to become a standard beneficiary of both the industrial and agricultural GSP offered to developing countries from which it was excluded during the Apartheid years. South Africa also indicated that her preferred long-term trade relationship with the EU would be as a member of the Lomé Convention. This option was advanced because the Lomé Convention offered preferential access to the EU. Secondly, all of South Africa's neighbours were members of the Lomé Convention, hence accession to the Convention would harmonize South Africa's relations with her neighbours. Consequently, South Africa received overwhelming support from SADC member states, the African, Caribbean and Pacific group of States and the EU parliament. However, the

European Commission and the Council of Ministers rejected South Africa's possible accession to Lomé. As a reply to South Africa's request, the EU Council of Ministers' meeting of June 1995 adopted detailed Negotiating Directives proposing progressive and reciprocal liberalization of trade with South Africa in order to establish a Free Trade Area. In the same directives the Council also proposed a Protocol for South Africa's qualified accession to the Lomé Convention.

At the end of June 1995, Commissioner Pinheiro presented the EU's proposals to his South African counterpart the Minister of Trade and Industry. Soon after it received the proposals South Africa held a series of consultations with various role players including organized labour, business, Parliament and the general public.

Numerous consultations were also held with partners and neighbours in the Southern African Customs Union (SACU) and the Southern African Development Community (SADC). This process culminated in the adoption of negotiating guidelines by the South African Cabinet.

Presentation of Trade Offers

South Africa's acceptance of the objective of a possible Free Trade Area triggered within the EU an internal process of consultation and debate to develop the EU's detailed offer (mandate) to South Africa. Although good progress was made on the non-trade aspects of the negotiations, both South Africa and the EU spent some time developing their negotiating positions (mandate) in the area of trade. It took eight months for the EU member states to reach an agreement on what to offer South Africa, at least four months more than was initially expected. The strong agriculture lobbies, who raised their fears about the increased competition that South Africa would pose to their interests in the EU market, led to some member states drawing up long lists of exclusions of mainly agriculture products for the proposed FTA with South Africa.

It was in March 1996, that the EU Council adopted a second mandate with more detailed proposals for a FTA. The proposal reflected the disquiet of the agriculture lobby groups in that it excluded numerous agriculture products. South Africa embarked on another round of extensive consultations with its domestic constituency to further explain the detail and outcome of the process. SACU and SADC were also consulted again on the EU's second mandate. In January 1997, South Africa presented formally its own negotiating position to the EU. This was supplemented by a more detailed trade offer in June 1997.

Trade Negotiations

In November 1997, South Africa presented a detailed line by line trade offer marking the beginning of trade negotiations on more than 8000 tariff lines. During a series of difficult and often frustrating negotiation rounds that took place in 1998, the two parties managed to narrow the gap between their respective positions. After 21 rounds of talks the negotiating parties reached an *ad referendum* compromise on the sidelines of the World Economic Forum in Davos, in January 1999. Some aspects of the Davos compromise were rejected by the EU Council of Ministers due to the dissatisfaction of some member states. The agreement was finally approved by the EU's Heads of State and Government meeting in Berlin in March 1999, and it was signed in Pretoria on 11 October 1999. It provisionally entered into force on 1 January 2000.

B. Areas of Cooperation

The Trade, Development and Cooperation Agreement covers a wide field of co-operation. It includes provisions for a Free Trade Area, Trade-related issues, Economic Cooperation, Political dialogue, financial assistance and development cooperation, and social and cultural cooperation. The framework of cooperation includes four more-side-agreements, two of which have already been concluded viz., the Lomé Protocol and the Science and Technology agreement. The Wines and Spirits agreement and the Fisheries agreement are currently being negotiated.

C. Trade

The most prominent component of the TDCA is the provision for the establishment, after a transitional period, of a Free Trade Area (FTA) between the EU and South Africa. Provisions for the FTA make the agreement WTO compatible, as it includes essentially all sectors and, it covers around 90 per cent of all trade between the EU and South Africa. It involves agriculture and industrial sectors with tariff liberalization schedules based on the concept of negative lists. Furthermore, it employs the twin concepts of differentiation and asymmetry to cater for the differing levels in economic development of the two parties.

The main characteristic of the FTA is that South Africa will liberalize fully 86 per cent of its imports from the EU by the end of a transitional period of 12 years. On the other side, the EU will liberalize fully 95 per cent of imports from South Africa by the end of a transitional period of 10 years.

The Mechanics of Negotiations

The team of negotiators from South Africa was confronted with a vast, experienced and very resourceful bureaucracy. South Africa had no choice but to learn quickly if her interests were to be secured. Thus, the first lesson for South Africa was the need for a technically competent and knowledgeable team of negotiators. Secondly, political involvement and understanding of issues was imperative for, ever so often during the negotiations, consultations that would have a profound impact on resolutions taken in the negotiation room, occurred at a political level outside the negotiating forum.

Exclusions and Subsidies

The EU in its March 1996 negotiating directives envisaged the exclusion of 46 per cent of South Africa's agricultural exports to the EU and, this is one area where South Africa had a comparative advantage. The powerful farmers' lobby groups through the EU's Committee of Ambassadors and the Directorates-General of Agriculture and Trade ensured that agriculture was protected in line with the Common Agriculture Policy (CAP). The EU paid subsidies such as production and input subsidies as well as exports restitution support measures of up to 50 per cent. A gigantic figure in particular, when it was compared to 15 per cent for South Africa. Furthermore, South Africa had an insignificant market share in the EU with her total agricultural exports comprising less than two per cent of the EU's total agricultural imports. Most of South Africa's farm products enter the EU market during the European off-season, thus they do not directly compete with European producers. Despite the absence of direct competition with the EU's agriculture produce, the CAP ensured that the European market remained protected.

South Africa viewed this protection as being in direct conflict with the decision adopted by the EU Council of Ministers on 18 April 1994 to support South Africa's democracy and transitional measures. At this time, South Africa's ability to compete needed to be encouraged and not stifled.

South Africa needed the TDCA within the first five years of its new democracy to spur growth, increase investment, and generate employment in order to reduce poverty. However, the negotiations took almost four years. Ineluctably, the historical importance of the TDCA as an instrument to leverage investment inflow into South Africa quickly fizzled out when member states prolonged negotiations to protect their interests at all costs. Another lesson for South Africa was that the European Commission would not easily agree to concessions because they were on the other party's development plan and/or objectives. The driving force was the extent to which the EU's economic interests had been secured.

D. Trade Related Issues and Other Agreements

Linkage with Other Agreements

Some member states considered that all the agreements (i.e. the TDCA and side agreements) negotiated between the EU and South Africa had to be linked. This meant qualified accession to Lomé could be contingent on the bilateral trade agreement on market access. It was stipulated by the Commission that significant movement was required on the side agreements before the EU could conclude an agreement with South Africa. Furthermore, all these agreements were to be linked to progress the EU would make with South Africa on issues such as competition policy, public procurement, intellectual property, standards and certification, services and international maritime transport.

It was South Africa's view that linking the side agreements was unfair and contrary to the spirit of the Luxembourg Council meeting of April 1994. The EU's expectations on linkages were pronounced during negotiations at a time when South African industry was faced with onerous restructuring as a result of changes in economic policies. South Africa could not afford to delay implementation of the TDCA because of slow progress in other parallel negotiations. Advice to ACP States as they prepare to negotiate with the EU is that "linkages" of any kind must be defined and understood well before negotiations commence in order to avoid misunderstandings.

Trade Related Issues

South Africa was not prepared to enter into pre-emptive bilateral agreements with the EU on areas where she was developing policies (e.g. competition policy) or in areas where commitments had to be made in the WTO (e.g. Intellectual Property Rights). The agreement also recognizes each party's rights as agreed in the WTO such as the Agreement on Safeguards, Anti-Dumping or Countervailing Measures, and strict observation of the General Agreement on Trade and Services. In order to facilitate the proper functioning of the Free Trade Area the two sides agreed to cooperate on customs services and standardization, certification and conformity assessment. ACP States therefore need to be able to separate bilateral issues with the EU from multilateral issues that should be discussed at WTO level.

Tariff Schedules

In recognition of South Africa's developing economy and the country's industrial restructuring efforts, the EU will open up its market faster and more extensively than South Africa will do for EU products. Specifically, the EU will liberalize about 95 per cent of its South African imports within 10 years. South Africa in turn will liberalise 86 per cent of EU imports in 12 years. Within these transitional periods, the bulk of liberalization for industrial products from South Africa will take place in the first four years. South Africa on the other hand will reduce tariffs for the bulk of industrial products after six years, as shown in the tariff liberalization schedules below. It will be observed from the schedules that for agriculture products, the EU allowed only 21 per cent of products duty free at entry into force of the agreement, whereas South Africa allowed in more than 30 per cent.

SA Tariff Liberalization Schedule: Summary
Industrial products

Duty-free at entry into force	62 %
Within 3 years	1 %
4 to 5 years	8 %
5 to 12 years	2 %
6 to 12 years	14 %
Partial liberalization	3 %
Reserve list	11 %
Total liberalization	86 %

SA Tariff Liberalization Schedule: Summary
Agricultural products

Duty-free at entry into force	34 %
Within 3 years	5 %
4 to 5 years	7 %
5 to 12 years	35 %
Reserve list	19 %
Total liberalization	81 %

EU Tariff Liberalization Schedule: Summary
Industrial products

Free at entry into force	86.34%
Within 2 years	5.08 %
Within 6 years	0.50 %
3 to 6 years	6.90 %
50% reduction at e.l.f.	1.16 %
Reserve list	0.02 %
Total liberalization	98.83 %

EU Tariff Liberalization Schedule: Summary
Agricultural products

Free at entry into force	21.02 %
Within 3 years	5.76 %
Within 10 years	13.69 %
3 to 10 years	3.85 %
5 to 10 years	16.80 %
Processed products – partial liberalization	0.17 %
Partial liberalization	10.83 %
Reserve list	27.78 %
Excluded–EU denominations	0.11 %
Total liberalization	61.12 %

Tariff liberalization by the EU is spread over the transitional 10-year period with significant tariff reduction occurring towards the end. More than 30 per cent of South Africa's agriculture products are either on the reserve list or they have been partially liberalised. The schedules reflect the stark reality of the EU's protective policies regarding farm products. This is also the area where ACP member States have a comparative advantage, hence they must prepare for hard bargaining and also be mindful of developments in Geneva.

Table 1 below lists both industrial and agriculture goods that are on the reserve list and which will be reviewed periodically.

Table 1
Industrial and agricultural products on the reserve list

Main products excluded by the EU (list to be periodically reviewed)	Main products excluded by South Africa (list to be periodically reviewed)
Agricultural goods: Beef Sugar Some dairy (incl. milk, butter, whey) Sweet corn Maize and maize products Rice and rice products Starches Some cut flowers Some fresh fruits (certain citrus, apples, pears, grapes, bananas) Prepared tomatoes Some prepared fruits and fruit juices Vermouth Ethyl alcohol Some fish	Agricultural goods: Beef Sugar Some dairy (incl. milk, butter) Sweet corn Maize and maize products Barley and barley products Wheat and wheat products Starches Chocolate Ice cream
Industrial goods: Unwrought aluminium	Industrial goods: Petroleum and petroleum products Some chemical products Some textiles Automotive
Total of 304 tariff positions, representing 3.4% of total imports from South Africa	Total of 120 tariff positions, representing 10.9% of total imports from the EU

Institutional Provision

A cooperation Council has been established to ensure that the agreement operates effectively and its objectives are pursued in the best possible way. The agreement also contains provisions for regular contact between Parliaments of the two sides as well as between the Economic and Social Committee of the (ECOSOC) EU and South Africa's national Economic Development and Labour Council (NEDLAC). A cooperation Council is an essential element for administering the agreement.

Southern Africa/SADC Trade Protocol

Any agreement reached between South Africa and the EU had to consider the impact it would have on SACU and SADC since both South Africa and the EU have a commitment (e.g. Berlin Conference) to enhance and strengthen economic development and integration in Southern Africa. It had to be borne in mind that South Africa was part of a Customs Union (SACU). Furthermore South Africa had committed herself to a Free Trade Agreement with a group of developing and least developed countries that enjoyed preferential non-reciprocal access to the EU's markets through Lome.

During negotiations it was, and it still is, South Africa's long-term interest to develop a prosperous and balanced regional economy based on the principles of equity and mutual benefit. To this end the approach advocated during negotiations was one which recognized that uneven development could not be rectified solely by trade policy. It required a blend of policy measures including a well-articulated regional industrial development strategy and investment policy.

As South Africa was negotiating with the EU she had already committed herself to implement, with her neighbours, a free trade area in Southern Africa that would give least developed states in the region preferential and asymmetrical access into the South Africa market. It was therefore imperative that the EU took cognisance of the different levels of development between itself and South Africa. In addition, it had to recognize that South Africa, BLNS states and the whole of SADC would have to bear the burden of massive adjustment costs. Hence, a longer phase-in period had to be granted to South Africa.

Southern African Customs Union

During negotiations with the EU, South Africa was also renegotiating the SACU agreement with BLNS. The intention was to protect and preserve the integrity of the Common Customs Union. Article 19 of the Southern African Customs Union Agreement (1969) conferred to BLNS countries a right to concur on any agreement with a third party. Thus, their concerns had to be considered in an agreement between South Africa and the EU.

SADC Tariff Reduction Schedule

In line with the objectives of regional economic development and the SADC Trade Protocol signed in Maseru-Lesotho in August 1996, it was South Africa's view that reciprocal tariff concessions to the EU had to be phased in so as not to negate tariff concessions made to SADC countries. However, as it turned out the TDCA provisionally entered into force before the SADC Trade Protocol.

The SADC Trade Protocol also employs the concept of asymmetry. In this case SACU members have agreed to liberalize their tariff regimes at more rapid rates than the rest of SADC needs to. The liberalization timetable of non-SACU SADC states is "back loaded" to allow time for adaptation. In essence the phase-down states that products or product inputs that currently carry a duty of between 1 per cent and 17 per cent will be reduced to zero at entry into force. This reduction coupled to those items that are already zero-rated will result in 69 per cent of all trade being liberalized by SACU. There will be a more gradual liberalization of three years for products which currently fall under an 18 per cent to 25 per cent tariff heading, while those that enjoy a duty of 25 per cent will be phased down over five years. In the final analysis, 97 per cent of the customs duties will be at zero after five years with the remaining 3 per cent being sensitive products such as sugar and automotive products.

Negotiations with SADC on the Trade protocol were different to negotiating with the EU. During the latter negotiations, South Africa was negotiating with a developed regional economic block. It was resourceful and often ahead due to its experience in trade deals. Negotiations with SADC were the opposite for there was clearly a capacity problem. However, as negotiations continued the quality of debate on issues for negotiating improved tremendously, partly because of assistance from external bodies such as the United States and UNCTAD.

Three deductions could be made from the processes involving the EU on one hand and SADC on the other:

1. Capacity must be improved through proper planning and understanding of detail. Principles that will impact on the end result of the negotiations such as "linkages with other agreements", exclusions and subsidies should be understood well before detailed negotiation.
2. Objective external bodies such as UNCTAD assist tremendously during negotiations as they did in the case of the SADC Trade protocol.
3. Instruments of implementation must be in place and, examples would include certificates of origin and trained customs officers to implement agreed upon tariffs at entry into force.

II. NEGOTIATION OF FREE TRADE AGREEMENTS WITH THE EUROPEAN UNION: THE EXPERIENCE OF UEMOA

On 23 June 2000 at Cotonou, after eighteen months of negotiations, the 77 States of the ACP Group and the European Union signed a new 20-year Partnership Agreement. This Agreement succeeded the Lomé Convention which, since 1975, had governed the trade and cooperation relations between the two Parties.

The Cotonou Agreement, whose central objective is to reduce poverty, is based on political dialogue, development aid and improved economic and trade cooperation. This new global ACP-EU partnership is aimed at creating a more favourable context for sustainable development and the reduction of poverty and, at reversing the processes of social, economic and technological marginalization to which the ACP countries are exposed. It also introduces a very important innovation into EU-ACP relations.

Thus, instead of the non-reciprocal and discriminatory trade preferences of the Lomé Convention, the Cotonou Agreement incorporates a new trade regime based on free trade. Thus, the new Agreement provides for the ACP States and the European Union to negotiate and conclude, at the latest by 31 December 2007, new trade arrangements compatible with the rules of the World Trade Organization and involving the progressive removal of the barriers to trade between them and, closer cooperation in all the key trade-related areas.

This objective will be pursued in particular, on the basis of the regional integration initiatives of the ACP States. Within the new framework for trade, regional integration is regarded as the key to the incorporation of the ACP States into the world economy. The main recommendation is the setting up, after a preparatory period, of Regional Economic Partnership Agreements (REPAs) between the EU and the ACP countries, associated in regional groupings that have already made significant progress with the integration of their economies.

The REPAs will be set up after a preparatory period lasting not more than eight years, i.e. from 2000 to 2007. The WTO has been asked for a special derogation in order that the Lomé IV trade regime may be maintained during this preparatory period, in the course of which the two Parties will have to conduct negotiations to establish a new framework for their trade relations.

In view of the importance of these negotiations, which will have to define the shape of the new EU-ACP trading system destined to emerge over the next few decades, the following main points should be addressed:

- the challenge of the REPAs and the implications for UEMOA Member States;
- UEMOA's assets in negotiating a REPA with the European Union; and
- the conditions of negotiation of a balanced partnership agreement with the European Union.
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A. The Challenge of the Repas and the Implications for UEMOA Member States

At the heart of the negotiations between the European Union and the ACP countries, which are soon to enter their active phase, lies a crucial issue for the latter: that of their place and their role in the multilateral trading system and the ability of their economies to withstand increased competition. A suitable timetable has been drawn up to lead them gradually towards the new reality.

The REPA timetable

REPAs will be introduced in accordance with the following timetable:

2000 - 2007: preparatory period

- June 2000 to August 2002: preparation of the negotiations;
- September 2002: beginning of formal REPA negotiations - pace of tariff reduction, sensitive products, accompanying measures, etc.;
- 2006:
 - i) evaluation of progress made with the negotiation of the new trade agreements;
 - ii) development of the public and private sector capacities of the ACP countries (implementation of economic cooperation);
- 2007: signature of the REPA;
- 1 January 2008: entry into force of the REPA.

2008 - 2020: REPA implementation period

Trade between the various eligible ACP groupings and the EU should have been effectively liberalized by the end of this 12-year transition period.

Thus, under the new Agreement, the Lomé IV trade regime, which is incompatible with WTO rules, will be replaced by several Regional Economic Partnership Agreements (REPAs) between the EU and regional groups of ACP countries. For the non-LDC ACP States not belonging to regional groupings capable of concluding a REPA, two solutions are envisaged: either the conclusion of a Free Trade Agreement (FTA) with the European Union, like that concluded with South Africa, or access to the European market under the less favourable improved Generalized System of Preferences (GSP). Finally, the Cotonou Agreement provides for the EU to grant, at the latest by 2005, duty-free access to the European market for almost all LAC-originating goods.

In this context, a UEMOA-EU REPA would consist in the establishment of a free trade area between UEMOA and the European Union. It is appropriate to assess the foreseeable impact on the Member States of UEMOA, one of the few groupings of States whose achievements and functioning argue for the conclusion of a REPA.

The foreseeable impact of the REPA on UEMOA

For the Parties to the Cotonou Agreement, The new framework for trade is intended to promote regional integration for the parties to the Cotonou Agreement, to give ACP countries' economic and trade policies greater credibility, to encourage domestic and foreign investment, to improve competitiveness and to support the integration of the ACP countries into the world economy. It should also enable the various partners to comply with the rules of the World Trade Organization.

The REPA would also serve to secure the process of economic reform. The national and regional economic reforms will likewise be stabilized by the commitments of the two Parties under the Cotonou Agreement. The reasoning underlying this new approach is based on the idea that a trade liberalization policy combined with a social development policy will lead to economic growth and the reduction of poverty.

Accordingly, insofar as new rules are to apply (in particular, reciprocity of preferences and more open markets), the REPA environment will certainly make an impact on the UEMOA Member States.

Economic impact:

Specifically, it should be noted that the REPA, which will be a trade regime entirely compatible with the rules of the WTO, should help to establish, within the UEMOA area, a transparent, predictable and stable environment capable of attracting potential investors. In particular, in the long term, the REPA should lead to increased investment in the export-oriented sectors of industry and reduced investment in

the traditional import substitution sectors. The expanded flow of direct foreign direct investment would come not only from the EU but also from promoters in other countries wanting to produce in the UEMOA region with a view to obtaining free access to the European market. The increased investment, together with the resulting transfer of know-how and technology, should help to improve the competitiveness of the UEMOA Member States and facilitate their progressive and harmonious integration into the world economy.

However, it should be mentioned that in 1998, with a view to evaluating the risks and analyzing the ability of various regional groupings to implement a REPA, the EU carried out studies to assess the effects of a REPA on certain African regional economic groupings such as UEMOA, CEMAC, and SADEC.

From the available information on the results of these studies relating to UEMOA it follows that the application of a REPA starting in 2005, as originally envisaged, would lead to a progressive increase in European exports to UEMOA. According to the simulations, these exports would rise from CFAF 1,515.9 billion in 2005 to CFAF 3,580.4 billion in 2017, i.e. by nearly CFAF 2,064.5 billion, a high projection. Based on a low projection, the increase would be only CFAF 195.4 billion.

For its part, UEMOA would have to contend with a cumulative loss of customs revenue estimated at between CFAF 524 and 1,541 billion over the twelve years of implementation of the REPA. Over the same period, UEMOA exports to the European Union would not be so affected by the Agreement, inasmuch as nearly 97 per cent of them (essentially raw materials) are already affected by liberalization.

The impact on agricultural production and food security:

Given the concept of «multifunctionality», which it developed throughout the course of the discussions on agriculture at the WTO's Third Ministerial Conference in Seattle, the European Union is certainly not yet ready, within the context of its Common Agricultural Policy, to stop supporting and subsidizing its agriculture.

Accordingly, one of the major consequences of implementing a REPA between UEMOA and the European Union would be to strengthen even further the competitive position of certain heavily subsidized European agricultural products (in particular, wheat flour, milk, sugar and meat) on UEMOA markets. It is therefore obvious that, if no real defence can be devised, the objectives pursued by the UEMOA governments in the areas of agricultural development and food self-sufficiency could be seriously jeopardized.

Other foreseeable consequences:

There are other considerations that should also be taken into account in connexion with the possible conclusion of a REPA with the EU, namely:

- The difficulties that UEMOA would face in liberalizing most of its external trade with the EU over the next twenty years: could its often uncompetitive enterprises withstand the pressure of increased competition? Likewise, would its member States be able to adjust to the resulting loss of customs revenue?
- Will the new ACP-EU Convention provide for a substantial increase in the financial resources available, so that in due course a support mechanism for the reforms can be put in place? Everything suggests that it will not, since the funding (EUR 13.5 billion) that the European Union is offering its ACP partners for financial and technical cooperation falls far short of their expectations.
- The risk of trade diversion, which would hamper the efforts of the UEMOA member States to diversify their sources of imports and export destinations, to the detriment of new links with the economies of America and Asia.

- The further consolidation of privileged commercial relations with Brussels might also divert the attention, capacities and resources of the UEMOA member States from the numerous opportunities being negotiated within the framework of the WTO's multilateral trading system.
- The difficulty of achieving, within the context of the REPA negotiations, improved access to the European market for sensitive ACP agricultural products. In this connexion, experience with the Euro-Mediterranean and EU/South Africa agreements has shown that the EU does not envisage any substantial improvement in access to the European market for these products, which continue to be subject to restrictions

Despite these difficulties, there are still many reasons why UEMOA should conclude a REPA with the European Union and it holds some important cards.

B. UEMOA'S Assets in Negotiating a Repa with the European Union

UEMOA, an historically integrated and economically viable area

The integration process in Africa, particularly in its Western sub-region, may be regarded as an embodiment of the political will to recreate federative entities of the kind that existed in pre-colonial times.

Even though the motivation may have differed, in keeping with the concerns of the initiators, attempts at integration may be viewed as one of the constants of the sub-region's socio-political evolution: UDAO (1959), UDEAO (1966), UMOA (1973), CEAO (1973), the Mano River Union (1974), ECOWAS (1975) and UEMOA (1994), to mention only the better known initiatives, past and present.

This snapshot of West Africa's various attempts at integration shows that the notion and practice of integration have always been present since, and even before, independence. In the French-speaking sub-region, the idea is deep-rooted and enduring, as shown by the sequence UDAO (1959) -> UDEAO (1966) -> UMOA (1973) -> CEAO (1973) -> UEMOA (1994).

Today, UEMOA has eight member States (Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo), with a total population of more than 70 million people spread over an area of 3.5 million km². In 1999, for this entire group of countries, the rate of growth was 3.5 per cent and the inflation rate 0.2 per cent. After five years of existence, the Union is now a powerful generator of development and a focal point for trade in the West African region.

A shared culture and currency also help to create a homogeneous, structured and viable entity. Since colonial times, there has been a constant urge to proclaim the specificity of the area which, whenever it is repressed, always re-emerges, stronger than ever, as an affirmation of an unshakeable political will to build a common destiny.

Taking the opposite approach to that adopted by the EU, UEMOA built itself around a common currency, the CFA franc. It was born of a desire on the part of the member States of UMOA to consolidate the advantages of a single currency by effectively integrating their national economies. This called for the exploitation of important assets such as the discipline and habit of collective decision-making long since acquired by the member States of the Union to provide monetary integration with the real foundation that it lacked.

Learning from past experience, the Heads of State and Government explicitly transferred sovereignty to the Union in the areas of common jurisdiction, entrusting it to supranational bodies responsible for implementing the Union's integration plan.

The institutional apparatus set up to achieve the Treaty's objectives consisted of executive, supervisory and consultative bodies, as well as autonomous specialized institutions. This apparatus was backed by a legal regime that established the primacy of the acts of the Union bodies over the domestic law of the member States.

Armed with this legal and institutional arsenal, in less than five years UEMOA has carried out a series of important and courageous reforms, which have established its credibility in the eyes of the international community.

Progress with regional integration and the coordination of trade policies

For a group of ACP States bent on regional cooperation, the first condition that must be fulfilled is to have formed a customs union or, failing that, a free trade area, with a high degree of trade policy coordination. At the moment, in West Africa, UEMOA seems to be the only regional economic integration organization to have met all these requirements.

This is an essential prerequisite without which the REPA's advantages could be outweighed by its disadvantages. The next two years should be devoted to preparing for the negotiations by studying the REPA's impact on the economies of the member States and the sectoral policies to be pursued in support of the negotiating offer. Having implemented its plan for liberalizing its intra-community trade and having introduced a Common External Tariff, UEMOA is technically better prepared than any other West African regional integration organization since, over and above the mere coordination of trade policies, it has gradually achieved the convergence of its members' economic policies, in support of the customs union.

The following is a list of the numerous initiatives for which the UEMOA States can take credit:

- establishment of a customs union, effective since 1 January 2000, with free circulation for originating products and a common external tariff;
- progressive introduction, since July 1996, of a mechanism for the multilateral surveillance and coordination of the economic policies of the member States; in December 1999, a UEMOA agreement on convergence, stable growth and a solidarity agreement was adopted by the Conference of Heads of State and Government, with a view to strengthening the exercise of multilateral surveillance in the Union;
- harmonization of the legal, accounting and statistical framework of government finance;
- harmonization of accounting legislation (SYSCOA);
- implementation of a programme of harmonization of indirect internal taxation (in particular, VAT and excise duties);
- establishment of a regional financial market (BRVM);
- ongoing development of a community investment code;
- progressive implementation of common sectoral policies in the industrial, agricultural and energy sectors, as well as in transport and communications.

Coming on top of all these reforms, the conclusion of a REPA with the European Union should make UEMOA the engine of the regional economy and promote steady and sustainable growth in its member States. It should also eliminate the risk of UEMOA's non-LDC States having to face, under the GSP, tariff barriers higher than those under the Lomé Convention.

Progress with the external liberalization process

The UEMOA Common External Tariff (TEC), which entered into force on 1 January 2000, provides for customs duties that range from 0 per cent to 20 per cent, a statistical charge (1 per cent) and a

community solidarity levy (1 per cent), with the result that aggregate border tax yield varies from 2 per cent to 22 per cent.

Compared with the previous national tariff systems, whose peaks varied from 22 per cent in Benin to 65 per cent in Senegal, the TEC constitutes a genuine rationalization of the border tax regime at UEMOA area level. The simplification achieved relative to the previous tariff systems has given economic operators a clearer picture of the tariff protection in place. The lightening of the tariff structure and the rationalization of the effective protection resulting from the new product categorization provide adequate safeguards for investment and give States the necessary incentive to seek greater integration into the world economy.

In general, the WTO provisions on customs unions have been taken into account by reducing external tariffs, the post-reform average duty rate (11.6 per cent) being lower than the corresponding pre-reform rate (13.2 per cent).

The importance of the EU in the region's foreign trade

UEMOA's external trade statistics show that the European Union is UEMOA's foremost trading partner, since it is the source of more than 50 per cent of the region's imports and receives more than 45 per cent of its exports. The importance of the trade between the two areas prior to the conclusion of a REPA constitutes a guarantee against trade diversion.

UEMOA's institutional capacity to evaluate, negotiate and implement a REPA

The Union's institutional framework and legal arsenal have helped progressively to establish a "community of law" at UEMOA level. Moreover, the implementation of various regional aid for integration programmes (PARI 1, PARI 2 and PARI-private) with the European Union has enabled the UEMOA Commission to build a capacity to plan and implement, for the benefit of the member States, a regional programme of partnership with the EU.

To conclude a REPA, the regional organizations must have the capacity and the necessary mandate to negotiate on behalf of the member States. Apart from the technical and administrative constraints, this requirement poses a problem of political will since, as in the case of the European Union, the member States of the REPA candidate organization would have to transfer to the community level all their rights and obligations in respect of trade policy.

Within UEMOA, this transfer of authority is legally enshrined in several provisions of the Treaty, in particular those relating to the realization of a common market.

Having been in effect for some years in the UEMOA area, the transfer is now a tangible reality. Thus:

- The customs tariff, like other trade policy instruments, is managed at community level.
- The Treaty empowers the Commission to monitor and sanction anti-competitive practices attributable to enterprises, whether private or public, and to States. The draft community competition legislation, which is being discussed with the member States, is consistent with these provisions.
- It is now the Union that concludes bilateral trade agreements on behalf of the member States (Article 84 of the Treaty); for this purpose, it mandates the Commission, which opens and conducts the negotiations. The Commission has already acquired valuable experience in this field in connexion with both the UEMOA/United States agreement, which is about to be signed, and the ongoing negotiations with the Kingdom of Morocco and the Tunisian Republic.
- Under Article 85 of the Treaty, the member States of the Union must henceforth agree on a joint position before undertaking negotiations in a forum in which the Union is not represented as a

contracting party. Within this framework, the Union organized consultations which enabled the adoption of joint negotiating positions in connexion with the holding of the WTO Ministerial Conference in Seattle, as well as ministerial meetings which led to the signing of the Cotonou Partnership Agreement.

Finally, in July 2000, as a logical consequence of the Cotonou Agreement, the UEMOA Commission was expressly instructed by the Council of Ministers to open and conduct negotiations with the Commission of the European Union, with a view to the conclusion of a REPA between UEMOA and the EU.

C. The Conditions of Negotiation of a Balanced Partnership Agreement with the European Union

The terms of the mandate to negotiate a REPA with the European Union call in particular, for the progressive establishment, in conformity with the rules of the WTO, of a UEMOA-European Union free trade area, over a twelve-year period starting from 1 January 2008.

However, if the UEMOA authorities are to negotiate a balanced agreement with the European Union, they must arrange, as quickly as possible, for a study of the impact of the Regional Economic Partnership Agreement (REPA) on the economies of the UEMOA member States. This impact assessment should in particular, make it possible to determine the various timetables for the removal of the tariff and non-tariff barriers to trade with the European Community, the corresponding schedules of products, according to their sensitivity to European competition and, the accompanying measures to be negotiated within the framework of the economic partnership.

Moreover, there are certain considerations that should be at the centre of the UEMOA negotiating group's concerns, namely:

- 1) The need to give the Agreement a development slant; to this end, the Agreement should:
 - incorporate every sector without exception, including the agricultural sector which the European Union is still trying to keep out of the discussions;
 - be consistent with a cover rate that ensures an adequate margin of protection for UEMOA's sensitive sectors and products; the maximum rate of 80 per cent proposed at the end of a study commissioned by the General Secretariat of the ACP Group and carried out by consultants at the University of Dar-es-Salaam in Tanzania could provide a good basis for negotiation;
 - incorporate differentiation with respect to cover, with the result that the EU would have to open up its markets more widely to UEMOA products than the UEMOA would be required to open up its market to European products;
 - incorporate an asymmetry into the tariff reduction timetables, with the result that the EU would have to open up its market to UEMOA products more quickly than the UEMOA would be required to open up its market to European products;
 - ensure adequate protection for vulnerable sectors within the scope of the Agreement;
 - incorporate safeguard clauses enabling UEMOA to take exceptional measures of limited duration or revise the timetable applicable to a product, to take account of serious difficulties to which that product might be exposed;
 - allow UEMOA, notwithstanding the established timetables, to take exceptional measures on behalf of infant industries and sectors undergoing restructuring or in serious difficulty;
 - ensure the implementation of appropriate measures intended to guarantee conditions that favour the development and diversification of UEMOA's exports to the European Union;

- incorporate rules of healthy competition into the trade relations between UEMOA and the European Union; the elimination of the domestic support and subsidies accorded by the European Union to certain agricultural products (milk, meat, sugar, wheat flour), which are competing illegally with UEMOA agricultural production, should be negotiated; in this respect, the UEMOA States should be especially alert during the negotiations concerning the Agriculture Agreement, which should enter their active phase during the first quarter of 2001;
 - support regional economic integration within the UEMOA area, through the implementation of measures calculated to facilitate the exploitation of the comparative advantages of the UEMOA member States and, more particularly, those that are landlocked or less developed;
 - incorporate rules of origin that provide not only for bilateral UEMOA-EU cumulation but also for regional (ECOWAS State)-UEMOA-EU or (ACP third country)-UEMOA-EU cumulation.
- 2) The assumption by the European Union of the net transition costs to which the UEMOA member States will be exposed upon implementation of the REPA; in particular, financing should be provided for an upgrading programme, as in the EU-Tunisia Agreement. This programme would comprise a series of measures on behalf of enterprises and the business environment with a view to enabling the UEMOA productive system to adapt to the demands of the new open-market situation, the initial aim being to enable these enterprises to understand and keep track of the development of technologies and markets, so that they can become more competitive in terms of price, quality and innovation.
 - 3) The elimination, from the moment the Agreement enters into force, of all quantitative restrictions and measures with an equivalent effect in trade between the two Parties.
 - 4) Non-discrimination, between UEMOA and European products, in respect of any measure or practice relating to internal taxation.
 - 5) The free movement of capital between the two areas, and in particular capital relating to direct investment within the UEMOA in companies established in accordance with the legislation in force.
 - 6) The strengthening of cooperation in other areas related to trade:
 - customs cooperation,
 - cooperation in international fora,
 - trade in services,
 - competition policy,
 - protection of intellectual property rights,
 - standardization and certification,
 - sanitary and phytosanitary measures,
 - trade and the environment,
 - trade and labour standards,
 - protection of consumer rights.
 - 7) The implementation of a programme of dynamic economic cooperation, with priority being given to areas of activity likely to be subject to stress or internal difficulties or, to be affected by the process of liberalization of trade between UEMOA and the EC. Above all, this cooperation will focus on sectors capable of facilitating the harmonization of the UEMOA and EC economies, especially those that can generate growth and create jobs. Economic cooperation will embrace the following non-exhaustive list of target areas:
 - education and training, advancement of women and young people,
 - health, campaign against AIDS,

- scientific, technical and technological cooperation,
 - environment,
 - industrial cooperation,
 - promotion and protection of investment,
 - cooperation in the field of standardization and conformity assessment,
 - financial services,
 - agriculture and fisheries,
 - transport,
 - telecommunications and information technology,
 - energy,
 - tourism,
 - cooperation in the field of statistics.
- 8) The establishment of a mechanism for consultation in connexion with the administration and monitoring of the Agreement.

D. Conclusion

It follows from the above that UEMOA is in a stage of advanced preparation for entering into negotiations with the European Union with a view to concluding a REPA.

At present, however, it would seem rash to attempt to predict how these negotiations will develop or how they will end. Nevertheless, in UEMOA's opinion, the idea of maintaining the status quo (merely rolling over the non-reciprocal trade preferences of the Lomé Convention into the REPA) should be completely dismissed.

In any event, throughout the negotiations with the EU, the groups of ACP countries interested in concluding REPAs should bear in mind that the WTO's multilateral trade rules are now binding on all and that, once they have been adopted, they cannot easily be circumvented or flouted. They will permeate the results of the negotiations with the European Union and the trade preferences which the ACP countries enjoyed on the European market will again be affected, even though already seriously curtailed as a result of the substantial tariff reductions accorded by the developed countries to their Asian and Latin American competitors within the context of the GSP.

The ACP countries as a whole will have to take this reality into account. They will therefore have to make a greater investment in the negotiations and the discussions being held within the various WTO bodies. It is within this small circle that the foundations of the new order in world trade for the next quarter of a century are being laid.

In these circumstances, the support of institutions such as UNCTAD for the efforts of the developing countries to participate in the decision-making process within the WTO will always be welcomed. The UEMOA Commission is thus grateful to take part in this forum.

III. REGIONAL INTEGRATION AND COOPERATION WITH THE EUROPEAN UNION: THE EXPERIENCE OF ECOWAS

Introduction

The Economic Community of West African States, established on 28 May 1975 by the 16 countries of West Africa, is an economic area extending over 6 million km² with a population of 214 million and a GDP of US\$ 106.7 billion. Agriculture, livestock raising, forestry and fishing are the main economic activities of the people of the sub-region. Depending on the country, the sector provides employment for between 44 and 80 per cent of the labour force. It should be noted that in most of the countries concerned the agricultural sub-sector accounts for 30 to 60 per cent of GDP. Products such as cocoa, coffee, groundnuts, cotton and fish are exported. The mining sector constitutes another source of income with exports of oil, iron, diamonds, gold, bauxite, copper and uranium.

The revised treaty signed on 24 July 1993 established the realization of an Economic Union of West Africa as the Community's principal objective, with a view to raising the standard of living of its peoples and strengthening relations between member States through amongst other things, to:

- the promotion of cooperation and development in every sector of socio-economic activity;
- the creation of a customs union through the liberalization of trade and the establishment of a common external tariff;
- the creation of an Economic and Monetary Union as a result of the coordination of economic and monetary policies.

To achieve these objectives, ECOWAS has developed and implemented major programmes in every sector.

A. Regional Integration Programmes

Programme evaluation reveals positive results in the area of free movement of persons, with the abolition of visas for citizens of the Community, the introduction of ECOWAS traveller's cheques and the adoption of a Community passport.

Significant advances have been made in the field of highway, telecommunications and energy infrastructure. The 4560 km long trans-coastal Nouackhott – Lagos highway is 87 per cent complete, and 83 per cent of the 4460 km long trans-Sahel Dakar-N'Djamena highway is already in place. The links connecting the coastal countries with the countries of the Sahel, comprising 48 sections of highway with a total length of 7591 km, are 67 per cent complete. In the area of road transport facilitation, an inter-State road transit protocol (TRIE) has been adopted with a view to making it possible to transport goods from one country to another without breaking bulk, under cover of a single customs document. Within this context national guarantees are being organized so as to make TRIE a reality in the member States. Where telecommunications are concerned, an initial programme, known as INTELCOM I, has made it possible to link the capitals of West Africa directly by telephone and fax. The implementation of a second programme, INTELCOM II, is to begin soon as part of the modernization of the telephone system.

The ongoing energy programme includes the implementation of a master plan for the development of the sub-region's energy potential with the exploitation of hydraulic power sites deemed to be of regional interest, the interconnection of national power grids 5600 km long and the laying of the West African gas pipeline linking Nigeria with Ghana via Benin and Togo. The private sector is extensively involved in the implementation of these various parts of the ECOWAS energy programme.

The ECOWAS free trade area has been fully operational since 1 January 2000 with the total elimination of customs duties, and taxes with equivalent effect, levied on trade in originating products approved under the trade liberalization scheme. However, the UEMOA preferential regime and the ECOWAS scheme operate in parallel within the same economic area. The two institutions are in the process of harmonizing their customs mechanisms so as to create a common external tariff applicable to all the countries of West Africa. Steps are also being taken to harmonize indirect internal taxation.

The determination of the member States to strengthen their financial capacities and improve their credibility in the eyes of their development partners with a view to the creation of a single monetary area has led to the establishment of a multilateral macroeconomic policy surveillance system. Thus, ECOWAS has criteria that have to be used as a benchmark for the convergence of budgetary and price policies. This multilateral surveillance system also includes a convergence council and national economic policy committees responsible for monitoring the observance of the rules by all the countries concerned. The rapid implementation of the multilateral surveillance system will facilitate the creation of a single monetary area in the year 2004, as envisaged at the last summit of Heads of State and Government held at Lomé on 9 and 10 December 2000. ECOWAS has also brought into circulation the ECOWAS traveller's cheque as a regional means of payment.

With the aid of its development partners, ECOWAS has installed various computer programmes for trade facilitation purposes. The first of these (ASYCUDA) is used for the automation and standardization of customs procedures, the second (Eurotrace) for the automatic processing of trade-related statistical and customs data, and the third (SIGOA) for facilitating the management and exchange of information available in the member States and, the management of trade contacts at fairs, exhibitions and business conferences. In addition, ECOWAS has organized two regional trade fairs (at Dakar in 1995 and at Accra in 1999).

Moreover, the Secretariat is currently working on the harmonization of commercial law in the ECOWAS area. This will provide economic operators with the legal basis they need to develop cross-border trade.

ECOWAS is the majority shareholder (11.7 per cent) in a new regional commercial bank (ECOBANK) with branches in eleven (11) countries.

In agriculture, regional basic seed and stock breeding centres have been established in several member States. Moreover, a transhumance certificate has been adopted to facilitate the free movement of cattle and herdsmen in the sub-region.

On the environmental front, ECOWAS and CILSS have drawn up and adopted a sub-regional anti-desertification action programme. ECOWAS also has a floating vegetation control programme in the process of being implemented.

As regards industry, the implementation of the regional macroeconomic framework will doubtless make possible the development of an industrial fabric composed of national and regional SMEs capable of meeting the Community's basic needs.

Where regional peace and security are concerned, the need to put an end to socio-political instability, with its ill effects on the process of development and regional integration, has led ECOWAS to adopt a number of legal instruments intended to govern the actions of its member States and introduce a regional dispute settlement mechanism. In this connexion, at Lomé on 17 December 1997, the Heads of State and Government decided to establish a mechanism for the prevention, management and settlement of disputes and the maintenance of peace and security. A protocol relating to this mechanism was likewise adopted at Lomé on 10 December 1999. The protocol introduced major innovations as regards the prevention of disputes in the region. It set up bodies, established procedures and installed a monitoring system designed to give the ECOWAS decision-making bodies early warning of trouble, thereby enabling them to control or neutralize budding disputes. It also provided for the setting up of

four observatories. A Mediation and Security Council is already in place. In the implementation process, ECOWAS has always acted in close cooperation with the United Nations and the OAU.

The protocol also contains important provisions whose implementation should make it possible to combat effectively cross-border crime, drug trafficking, and the proliferation of light arms. Thus, on 31 October 1998, the Heads of State and Government decided to adopt a regional approach to combating the proliferation of these weapons by declaring a moratorium on the importation, exportation and manufacture of light arms in the member States.

In order to support and facilitate the moratorium, ECOWAS requested and obtained from the United Nations, through UNDP, the implementation of a Programme of Coordination and Assistance for Security and Development (PCASED). ECOWAS will try to encourage other African States to join in the moratorium to ensure its success.

With a view to combating the scourge of illicit drugs, in October 1998, the Conference of Heads of State and Government approved the articles of the ECODRUG Fund, thus creating a fund for financing the Community campaign against drug abuse and drug trafficking.

As further evidence of their commitment to the regional anti-drug effort, in October 1998, the ECOWAS Heads of State and Government participated in a joint drug-burning ceremony during which they set fire to more than 1700 kg of seized narcotics.

In order to ensure the success of the integration process, the Conference of Heads of State and Government which met at Lomé on 9 and 10 December 1999 approved the establishment of the Community Court of Justice and the rapid installation of a Community Parliament. They reaffirmed their political will to work to strengthen ECOWAS and implement Community programmes to promote the growth and sustainable development of the West African economies. They therefore adopted a strategy for the acceleration of the integration process in West Africa and recognized the appropriateness of a differentiated approach on the way to integration. In this connection, the Conference approved the proposals of His Excellency Olusegun Obasanjo, President of the Federal Republic of Nigeria, to allow a group of Community States to take concrete and pragmatic measures to accelerate their integration.

This expression of a desire to speed up the economic integration process was quickly followed by concrete action. The Nigerian President undertook to remove all tariff and non-tariff barriers to regional trade and to eliminate the control posts on international highways so as to create an area without frontiers between Nigeria and its neighbours. Nigeria has now effectively removed all non-tariff barriers between itself and Benin and Niger.

Within the context of the acceleration of the integration process, a mini-summit of Heads of State and Government of the following seven countries: Benin, Burkina Faso, Ghana, Mali, Niger, Nigeria and Togo was held at Abuja on 27 March 2000 and adopted a wide-ranging programme (see Annex). Moreover, Nigeria and Ghana decided to create a second monetary area with those member States that so wished, with a view to establishing a single ECOWAS monetary area by 2004. This second monetary area embraces six countries: Ghana, Nigeria, Guinea, Gambia, Sierra Leone and Liberia.

B. Cooperation with the European Union

There is no doubt that we are living through a particularly turbulent transition period in the course of which the countries of the region have had to face numerous ills, such as poverty, marginalization, abuse of the environment, pillage of natural resources, crises, conflicts, etc.

At a time when large groupings are being formed (the European Union in Europe, NAFTA in America and ASEAN in Asia), Africa is the least prepared and the least well-equipped to confront these changes. Yet everyone agrees that the strengthening and deepening of the processes of regional integration and cooperation is the key to long-term investment, increased trade flows, and growth and employment. In fact, with globalization, regional integration is viewed as the surest route to incorporation into the world economy for the economies of the ACP countries.

The ACP countries should therefore appreciate and affirm their regional identity, while taking into account the spread of trading blocs, which is almost inevitable given the process of globalization of trade and production.

As for the negotiations with a view to a new agreement on ACP-EU partnership for development that ran from 30 September 1998 to 3 February 2000, they were an attempt to find a positive response to the globalization of trade, growing interdependence and the increasing risk of a large number of countries being marginalized. In the course of this search for solutions, it became clear that regional integration was the key to strengthening the competitiveness of the ACP countries and facilitating their absorption into the world economy. Thus, the regional and sub-regional organizations are repeatedly mentioned in the new agreement as one of the leading players in its implementation. At the very beginning of the new agreement, in Article 2 of Title 1, it is made clear that regionalization and the regional dimension are one of its basic principles. Article 8 of Title 2 on the political dimension provides for the participation of the regional and sub-regional organizations in the political dialogue, while Article 11 proposes a policy of concentration on the prevention and settlement of disputes and the development of regional and sub-regional capacities.

The economic and trade cooperation provisions of the agreement, which has mainly been negotiated to enable the ACP countries to meet the challenges of globalization and facilitate their transition to a liberalized world economy, are based on regional integration initiatives. Thus, according to the new agreement, the conclusion of new trade agreements should take into account the processes of regional integration taking place between ACP States. Moreover, the negotiation of these new Economic Partnership Agreements with the ACP countries should be compatible with WTO rules.

The ECOWAS Executive Secretariat believes that only with the assistance of all its development partners can the Community succeed in its task. This is why the 22nd Conference of Heads of State and Government made an urgent appeal to all its foreign development partners to give ECOWAS all the assistance it needs to implement its programme.

Within the framework of ACP-EU cooperation, ECOWAS is actively helping to strengthen the ACP Group. Thus, on the fringes of the ministerial meetings held to negotiate the agreement that will replace Lomé IV, the Executive Secretariat has regularly organized ministerial meetings to concert and coordinate the positions of the countries of West Africa with a view to moving the negotiations forward.

ECOWAS is intensifying its cooperation with all its development partners. Thus, more and more countries, including the United States, France, Japan, Norway, Romania, the Czech Republic, Sweden, have expressed interest in cooperating with ECOWAS in its programmes, and in particular in its peacekeeping efforts.

Above all however, ECOWAS is counting on Europe, its principal partner, to support the implementation of its ambitious programme to speed up the integration process in West Africa.

The actual implementation of the regional cooperation that the European Commission has described shows that it will be difficult to speed up the integration process in West Africa unless appropriate measures are taken to expedite the procedures for the mobilization of the resources allocated. Thus, in 1999, primary financing commitments for new projects were estimated at EUR 152 million. Before the end of the first half of 1999 programming delays had already developed, and this led to a downward revision of total estimated commitments under the 8th EDF from EUR 152 to 125 million. At the end of

the financial year, in December 1999, despite efforts to speed up project evaluation, final commitments amounted to only EUR 136.8 million, still below the 152 million estimated.

This delay in mobilizing resources is due to a lack of human resources and organizational constraints, mainly at European Commission level. In fact, the Commission has to manage thousands of national and regional projects for the 71 ACP countries and other countries around the world. This is the real bottleneck, to eliminate which the ACP Group has repeatedly asked for the human resources of delegations to be strengthened and the procedures for the disbursement of EDF funds to be simplified.

C. Conclusion

It will therefore be necessary to find a solution to the acknowledged slowness in the implementation of cooperation programmes, which is attributable to the lack of human resources and bureaucracy at Commission level.

It will also be necessary to consolidate peace in the Mano River countries by providing them with support within the framework of the ECOWAS mechanism and by promoting regional projects.

Support for integration must be given very close attention. In this context, it will be necessary to avoid penalizing regional programmes where the aim is to sanction a member country.

There is a need to improve the coordination and monitoring mechanism. This will require better communication between the various players, namely the European Commission, the Delegations of the European Commission, the West African States, ECOWAS, UEMOA and CILSS.

All of the latter, always subject to respect for human rights and fundamental freedoms, will have to be guided by the objectives of sustainable development and the eradication of poverty.

IV. PRIORITY ISSUES FOR ACP STATES IN RESPECT OF NEGOTIATING ECONOMIC PARTNERSHIP AGREEMENTS WITH THE EU

Introduction

Development and trade relations between the European Union (EU) and the African, Caribbean, Pacific (ACP) States have been governed since 1975 by a series of Lomé Conventions adapted and updated every five years to reflect changing circumstances. At the time of the negotiation of the last of these conventions (Fourth Lomé Convention) it was clear that it would be the last and that at the end of its ten year life in February 2000 new arrangements would have been negotiated to take its place. In 1996, preceding the start of these negotiations, the European Commission issued a Green Paper⁶⁵ in which it proposed different options for a successor arrangement to Lomé IV. Some of the ideas being promoted in the Green Paper had already become features of the Fourth Lomé Convention when, at the mid-term review (1994-95) principles such as respect for human rights and the rule of law became features of the revised convention, as also were increased roles for a variety of actors from civil society. Negotiations for the successor arrangement were launched in September 1998 and concluded in February 2000.

In June of that year the Heads of State and government of the EU and of the seventy-one ACP states signed a new twenty-year Partnership Agreement for 2000-2020 to replace the Lomé Convention. The new accord features some significant innovations, each of which will entail changes to EU-ACP relations in the coming years. It stresses the political and institutional conditions in a partner country as key elements for development, emphasizing good governance and accountability. It seeks the participation of non-governmental actors in all its areas of action. The accord establishes the framework for a phased transition to fully reciprocal trade relations, as opposed to the preferential arrangements that characterized Lomé and, it emphasizes poverty reduction, which now appears to be a major goal of the EU's global development policy.

In its essentials the Cotonou Agreement retains and seeks to build upon the achievements of twenty-five years of economic and trade cooperation, but it represents a clear shift away from the principles of non-reciprocity and non-discrimination of Lomé, towards the conclusion of reciprocal regional partnership agreements with groups of states that are fully compatible with World Trade Organization (WTO) rules.

The Lomé type trade regime will remain in force for a preparatory period (2000-2008) after which the new WTO compatible trading arrangements will be introduced to enter into force by 1 January 2008, involving the parallel liberalization of trade over a transitional period of at least twelve years. Formal negotiations on the new arrangements will start in September 2002. In preparation for negotiations for this transition from basically non-reciprocal trade preferences to new WTO compatible agreements, the African, Caribbean and Pacific countries are faced with the immediate task of discussing and elaborating the alternative trading arrangements which they could then propose in the form of a joint negotiating mandate to the EU prior to the commencement of the official negotiations. They need to identify arrangements that best promote their trade and development interests, taking into account their levels of development while also safeguarding and strengthening their sub-regional and regional integration processes.

This chapter is part of the process of preparing for the negotiations that start in September 2002. It focuses on options for ensuring conformity with multilateral trade rules of any new EU-ACP Partnership Agreements that might be negotiated. It makes a brief assessment of the economic and trade relations between the ACP and the EU under successive Lomé Conventions, as well as bilateral arrangements with certain non-ACP developing countries. It examines the main features of the

⁶⁵ Commission of the European Economic Communities, "Green paper on relations between the European Union and the ACP countries on the eve of the 21st century", 1996.

economic and trade aspects of the Cotonou Partnership Agreement and provides a roadmap of key issues that ACP States need to address in reaching a negotiating mandate on “economic partnership agreements” that will achieve WTO compatible results.

A. Options For Alternative Trading Arrangements

ACP-EU under the Lomé Conventions

The following are some of the main features of Lomé, which in all important respects have been carried over into the Cotonou Agreement:

- (a) non-reciprocal preferences in EU markets for products of ACP countries;
- (b) long-term contractual arrangements for exports (Lomé I to III were for four years each but Lomé IV was for ten); and
- (c) maintenance of the value of commodity exports through contracts and price stabilization or compensation mechanisms.

Available statistics suggest that ACP states did not always take full advantage of the non-reciprocal trade provisions of Lomé with the result that although preferences contributed to trade successes in a few of the countries, on the whole their value in terms of global benefits were disappointing. Part of this failure by ACP countries to take advantage of non-reciprocal preferential arrangements could be attributed to weak supply responses due to their poor institutional capacities which may also be an indication of the need to target preferences to cover products where a meaningful margin of preference over the applicable MFN rate can be obtained and, on products that the intended beneficiaries can produce and export competitively. However, a large part of this failure is also due to the erosion of the value of trade preferences resulting from successive rounds of tariff reductions and the removal of non-tariff barriers in multilateral trade negotiations. At the same time, there has been a tremendous growth in the number of countries to which the EU has offered preferences, sometimes better than those available to ACP countries. In fact, there are only two areas in which ACP states continue to enjoy significant preferences and these are clothing and textiles and the commodity protocols. However, present advantages for clothing and textiles exports to the EU are expected to be substantially reduced when the Multi-Fibre Arrangement is phased out in 2004. The gains derived from the commodity protocols will also be reduced, if not eliminated, with the on-going rationalization by the EU of its common agricultural policy (CAP), which is likely to involve a weakening of internal EU price support mechanisms and also by the agricultural negotiations currently under-way in the WTO. Thus, suppliers of protocol commodities face the prospect of severe price reductions on their commodity exports to the EU without any compensating gains from increased volumes. In any event, the tendency in developed countries is to reduce both the coverage and duration of preferences, a process that has been reinforced by the need to ensure consistency with the WTO.

Consistency with the WTO will emerge as one of the main factors that will determine the shape and content of a future trade arrangement between the EU and the ACP. All the previous trade accords under successive Lomé failed the WTO consistency test. They were neither (i) extended to all developing countries and, thus did not fulfil the obligations of generalized preferences; nor could they (ii) be considered to fall under WTO rules for regional free trade agreements because they were not reciprocal, i.e. did not include reverse preferences for exports from the EU into the markets of ACP States. The ACP States and the EU therefore, needed a WTO waiver allowing the EU to maintain the Lomé trade arrangements on a temporary basis even though they were in conflict with the basic non-discrimination principles of the WTO. The last WTO waiver expired, like the Fourth Lomé Convention, at the end of February 2000.

The Cotonou Agreement

In the negotiations on the successor agreement to the Fourth Lomé Convention between the ACP States and the EU, attempts were made to find a solution that was WTO compatible. In the end, these attempts failed in the sense that a completely new and WTO compatible framework, to take effect in 2000, could not be agreed upon. The trade arrangements under the Cotonou Agreement are of a temporary nature, but they indicate the path towards a future trading regime between the ACP States and the EU with the objective of achieving consistency with WTO rules. During this transitional period, scheduled to last until 2008 at the latest, the ACP States and the EU need another WTO waiver for the application of the arrangements established under the Cotonou Agreement. A request for such a waiver has been made but had not been granted up to a year after it was made.

The Cotonou Agreement provides that during the duration of its temporary trade arrangements, i.e. before 2008, the EU and the ACP States will negotiate a new regime that will be WTO compatible. The new arrangements shall be introduced gradually, over a preparatory period, and will come in essentially two forms. First, new economic partnership agreements (EPAs) will be negotiated which aim at a progressive removal of trade barriers between the EU and the concerned ACP. It is intended that the EPA will establish reciprocal free trade between the EU and the concerned ACP States in line with WTO rules on regional free trade agreements. Negotiations on these EPAs, to start in September 2002, “will be undertaken with ACP countries which consider themselves in a position to do so,”⁶⁶ i.e., not necessarily with all ACP countries. The intention is to establish the new EPAs with all ACP countries which are not least-developed countries (LDCs). The Cotonou Agreement also provides that in 2004 the EU “will 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.”⁶⁷ At that stage alternative possibilities will be examined 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.

The second element of the trading arrangements foreseen in the Cotonou Agreement relates specifically to the LDCs. In this regard, the EU has committed itself to “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-EU Convention”.⁶⁸ In other words, this second part of the future trade arrangements will seek to avoid the problem of WTO consistency by extending unilateral EU trade preferences to all LDCs, including those that are not members of the ACP Group. (At this time there are nine LDCs on the UN list that are not ACP countries).⁶⁹

Until these two main new types of preferential trade arrangements are defined and concluded, the Cotonou Agreement provides that specific unilateral EU preferences for the ACP countries will continue to apply, very much along the lines of the trade preferences under the Fourth Lomé Convention.⁷⁰ All industrial exports from the ACP countries will continue to enter the EU duty-free. For agricultural

⁶⁶ Cotonou Agreement, Article 37:5. The Cotonou Agreement is available on the website of the EU Commission at http://www.europa.eu.int/comm/development/cotonou/overview_en.htm.

⁶⁷ Cotonou Agreement, Article 37.6.

⁶⁸ Cotonou Agreement, Article 37:9. This provision of the Cotonou Agreement also foresees that the new regime for LDCs “will simplify and review the rules of origin, including cumulation provisions that apply to [LDC] exports”.

⁶⁹ Unilateral trade preferences extended by developed countries to the LDCs (but not, in the same form to other developing countries) are WTO legal under paragraph 2 (d) of the 1979 Enabling Clause, allowing for “special treatment of the least developed among the developing countries in the context of any general specific measures in favour of developing countries” (GATT, BISD, 26th Supplement, p. 203, Geneva, March 1980).

⁷⁰ The respective text in the Cotonou Agreement (Article 36:3) provides that “in order to facilitate the transition to the new trading arrangements, the non-reciprocal trade preferences applied under the Fourth ACP-EU Convention shall be maintained during the preparatory period for all ACP countries, under the conditions defined in Annex V to this Agreement”.

products, some amendments of the Fourth Lomé Convention preferences products were agreed.⁷¹ The special preferences for sugar and beef extended to selected ACP countries under Lomé also remain in force. The Banana Protocol has not been renewed and the EU is seeking to put in place a new banana regime as requested by the WTO's Dispute Settlement Body following a complaint by certain non-ACP banana producing and exporting countries.⁷² Regarding the future of the arrangements for sugar and beef, it was agreed that they will be reviewed in the context of the new trading arrangements, with a view to ensuring their compatibility with WTO rules. What this will mean in practice is not yet clear and needs to be examined closely by ACP States, especially by the non-LDC ACP States.

EU Trade and Cooperation Agreement with non-ACP Developing Countries

An indication of the EU's negotiating approach to a post-Cotonou Agreement with the ACP could be gleaned from the Agreements it has recently entered into with non-ACP countries. The Trade, Development and Cooperation Agreement with South Africa is illustrative.⁷³ Following a request by South Africa, which, initially was for membership of the Lomé Convention the EU, in March 1996, proposed to South Africa that a reciprocal Free Trade Area (FTA) be established in accordance with WTO rules. This should include a 10-year transitional period from the entry into force of the Agreement and cover "substantially all trade" between the parties in all sectors. The proposal⁷⁴ also set out the broad timetable by which tariffs would be eliminated on both agricultural and non-agricultural products. The EU affirmed that a possible element of differentiation could be implemented in the liberalization process with South Africa. However, early in the negotiations it was clear that the EU envisaged reaching reciprocal duty-free access of about 90 per cent for both parties at the end of the FTA transitional period. This translated into a request for elimination of duties by South Africa on about 40 per cent of the 1994 value of its imports from the EU in exchange for duty free access to an additional 10 per cent of the 1994 value of South Africa's exports to the EU, after taking into account products already entering duty free.⁷⁵

South Africa presented its own negotiating mandate in November 1996.⁷⁶ It suggested that the aspects to be considered in an EU-South Africa Agreement should be:

- a longer phase-in period should be granted to South Africa;
- the EU should open a far greater share of its market to South Africa than South Africa is required to open to the EU;
- an agreement should take account of the needs and interests of SACU, especially regarding the common revenue pool, reciprocity, post-Lomé market access, practical issues such as border control and rules of origin, trade and investment diversion and the impact of an FTA on specific sectors, mainly agriculture. The EU should take responsibility for costs to SACU arising from an FTA with South Africa;
- reciprocal tariff concessions to the EU should be phased in so that they do not negate tariff concessions made to SADC countries; the phasing-in scheme should also contribute to a regional trade and development framework.

⁷¹ Further details are provided in the paper by S. Tangermann on "The Cotonou Agreement and the Value of Preferences in Agricultural Markets for African ACP".

⁷² European Communities – Regime for the Importation, Sale and Distribution of Bananas (WT) document WT/DS27/12).

⁷³ The EU-South Africa Trade, Development and Cooperation Agreement.

⁷⁴ Permanent Representative Committee of the EU Council Note n.6096/96 concerning Complementary Negotiating Directives for a Trade and Cooperation Agreement with South Africa.

⁷⁵ Eurostep Briefing Paper. The EU-South Africa Development and Cooperation Agreement. An analysis of its implication in Southern Africa, 31.12.2000.

⁷⁶ Government of South Africa: Basis for a Trade and Development Agreement between the Republic of South Africa and the EU, 23/01/97.

Detailed offers on tariff elimination were made by South Africa and the EU in late 1977 and early 1998 respectively, and, following several rounds of negotiations, the Agreement was signed in October 1999. It entered into force in January 2000 in the face of strong opposition by some EU member states that considered their interests threatened.

The Agreement commits the EU and South Africa to establish a FTA in conformity with WTO rules within a 12-year transition period. It commits both parties to tariff reductions based on the applied rates prevailing on the day of entry into force of the agreement on substantially all trade without excluding any sector. It allows South Africa a longer transition period (12) years than the EU (10 years), while requiring the EU to eliminate tariffs on a higher percentage of currently traded goods (95 per cent) than is the case for South Africa (86 per cent). However, taking as a measure the extent of improvement in current levels of market access, South Africa is required to make a significantly greater adjustment effort than the EU. For the EU, the tariff changes introduced are estimated to affect only 25 per cent of currently traded goods, in a context of a weighted tariff average of only 2.7 per cent. For South Africa, in contrast, the corresponding tariff changes introduced through the agreement will affect an estimated 40 per cent of currently traded goods in a context of a weighted average tariff of 10 per cent. Furthermore, in key sensitive sectors such as agriculture, the South African market will allow more extensively duty free competition than will be the case for the EU market.⁷⁷

The WTO Compatibility of Various Options

Non-reciprocal trade preferences

The Cotonou Agreement provides the broad framework of various options for a trade and economic partnership arrangement between the ACP States and the EU. First and foremost is the continuation of the Lomé type non-reciprocal trade preferences for an interim period lasting until the end of 2007. The continuation of non-reciprocal preferences, with a number of improvements by deepening the margins of preferences and widening the agricultural product coverage, is an option that has the support of the ACP.

The challenge facing ACP States during the preparatory period is how to make more effective use of the preferences that are currently available. This can also be encouraged by means of removing residual non-tariff barriers on agricultural exports, liberalizing rules of origin, simplifying the procedures, and raising awareness among ACP economic operators about the preferences that are available to them in EU markets. Most importantly, greater emphasis must be placed on supporting the ACP States in strengthening the quality and efficiency of their production bases and in diversifying into agro-based industries and other dynamic export sectors including services. These conditions are *sine qua non* for benefiting from the *status quo* during the preparatory period between 2000 and 2007.

The key is for the ACP to take advantage of the transitional period to maximise efforts to achieve greater competitiveness in production and, to seek out and exploit areas in which there is a potential for greater efficiency in the supply of existing and new export products. The WTO integrated programme of technical assistance and the support programmes of other multilateral and international organizations should be mobilized and directed towards assisting ACP countries in the task of strategic global repositioning, as they seek to achieve greater productivity and competitiveness through diversification and the development of new economic sectors, including a range of services.

There are a number of other factors which ACP States need to consider as they seek to take advantage of the transitional period. These include (a) the diminution of the competitive advantages enjoyed by ACP States in the EU market over the long term, owing to the erosion of margins of preferences as the EU implements and deepens its MFN tariff liberalization under the WTO, including under the reform process necessitated in the WTO Agreement on Agriculture; (b) textile and clothing exporters should expect strong competition from non-ACP producers, as the programmed elimination of the EU's multi-fibre arrangement is effected over 10 years up to the year 2005, according to the WTO

⁷⁷ Eurostep Briefing Paper

Agreement on Textiles and Clothing; (c) the fact that ACP States would have to face direct competition from the non-ACP LDCs that would benefit from preferential market access into the EU and potential trade diversion in products like clothing and processed fish; and (d) competition from countries in Latin America, North Africa and elsewhere with which the EU is negotiating or, has concluded free trade agreements, allowing products from these countries to enter duty free into the EU.

Trade relations among developed and developing countries have historically been built on four main pillars viz.: (a) provision through preferences for improved market access into developed countries of the products of developing countries; (b) non-reciprocity or less than full reciprocity; (c) flexibility in the application of trade rules and disciplines; and (d) maintenance of the value of commodity exports. They have been fundamental features of Lomé. The difficulty here is that they all offend the non-discrimination overriding principles of GATT/WTO. Nevertheless, they have been provided under the broad coverage of special and differential treatment (SDT), whose conceptual justification is that developing countries are intrinsically disadvantaged in their participation in international trade and, therefore, any multilateral agreement involving them and developed countries must take into account this intrinsic weakness in specifying their rights and responsibilities. A related premise has been that the trade policies that would maximise sustainable development in developing countries are different from those in developed countries and hence the policy disciplines applying to the latter should not apply to the former. The final premise is that it is in the interest of developed countries to assist developing countries in their fuller integration and participation in the international system.⁷⁸

The trade preference option is presently in effect under the Cotonou Agreement. However, it has also been difficult to defend this option in the WTO, including the present version in the Cotonou Agreement. While most WTO members support the principle behind the Lomé Convention as a special and differential measure in favour of the trade and development prospects of ACP States, the general view among non-ACP members of the WTO is that the trade provisions of the Lomé Convention are not consistent with GATT Article XXIV (on free trade areas and customs unions) and GATT Part IV (Trade and Development of non-reciprocity) taken together or separately. The trade preferences are neither a reciprocal free trade areas or a customs union in the sense of GATT Article XXIV, nor a generalized system on non-reciprocal preferences in the sense of GATT Part IV.

The earlier EU-ACP discriminatory trade agreements have been possible because the parties have been able to justify them by reference to the exceptions that the rules GATT/WTO provide. The exceptions that have provided the basis for discrimination are:

- (i) the provisions of GATT Article XXIV covering Free Trade Areas and Customs Union;
- (ii) the Enabling Clause GATT Part IV providing for Special and Differential Treatment to developing countries;
- (iii) The waiver in WTO Article IX (formerly GATT Article XXV)T Article XXV).

GATT Article XXIV makes an exception for Free Trade Areas or Customs Unions, and the conditions that must obtain for a trade arrangement to assume FTA or customs union status are quite clear and straightforward. The procedure for obtaining WTO approval was until recently quite straightforward also.

The conditions are mainly embodied in paragraphs 5, 6, 7 and 8 of GATT Article XXIV and they require:

- substantial trade coverage;

⁷⁸ For a full description of SDT see Constantine Michalopoulos in the Role of Special and Differential Treatment for Developing Countries in GATT and the World Trade Organization.

- no raising of trade barriers against third countries;
- no a *prior* sector exclusion;
- a 10-year transition period for interim arrangements leading to the creation of the FTA or customs union; and
- biennial reporting to the WTO Committee on Regional Trade Agreements.

As regards procedure this is both tedious and complex and formal endorsement or rejection hardly occurred provided, of course FTA or customs union conditions were satisfied. This position seems to have changed in the new environment created by WTO. This point is discussed below under Waiver.

Enabling Clause

The second exception is the Enabling Clause. The Clause establishes the principle of special and differential treatment for developing countries in trade relations. Its rationale is that developing countries suffer a number of disadvantages in their participation in international trade and that any trade arrangement involving them and developed countries must take these structural weaknesses into account when prescribing rights and obligations. However, beginning in the 1980's much of the intellectual underpinnings for special and differential treatment for developing countries began to be extensively questioned. Their use in future arrangements is likely to be more selective and result oriented than in the past, but they are likely to remain a lasting feature of trade relations between developed and developing countries if, for no other reason than because of the range of bilateral and regional trade agreements of which ACP countries are participants and, which have SDT as essential features whose integrity the countries will wish to preserve.

The Waiver

The third avenue by which a discriminatory trade arrangement can gain WTO endorsement is through the Waiver. In practice WTO members can waive any obligations under the GATT/WTO rules. However, the procedure for obtaining a waiver under WTO rules is now a good deal more onerous than was the case under GATT when the Lomé waiver was first obtained. Efforts to secure a waiver for the Cotonou Agreement has proved extremely difficult as countries have been able to delay the process using both substantive and procedural arguments. Moreover, the most virulent opposition has come from other developing countries that succeeded in having the WTO rule against the EU banana regime. Indications are that they will uphold their opposition until a banana regime satisfactory to them has been introduced. The uncertainty regarding the outcome of a waiver request is further compounded by the evolving WTO consensus rule for arriving at decisions.

Non-legal Considerations

Part IV of GATT, the Enabling Clause and the Waiver provide the legal basis for bringing an otherwise discriminatory trade arrangement into conformity with WTO, but there are other considerations that have to do with the spirit of the rules as set out clearly in the Preamble to the WTO Agreement. Examples of general preambular statements include 'the need for positive efforts designed to ensure that developing countries and especially the least developed secure a share in the growth of world trade, commensurate with the needs of their economic development and that again, in implementing their commitments on market access (in agriculture) developed country members would take fully into account the needs and conditions of developing country members by providing for a greater improvement of opportunities and terms of access for agricultural products of particular interest to these countries.' The preambles are replete with similar exhortations affecting for example, anti-dumping and other rights. While most observers will agree that these provisions are not legally enforceable, many will also argue that in the implementation of the multilateral system attention should also be paid to the spirit and intention and not merely to the strict legal interpretation of the rules.

Exemptions

Exemptions are covered in various provision of GATT (1994) and they recognize the principle that developing countries in their trade negotiations with developed countries should not be required to grant equivalent concessions as regards the removal of tariff and non-tariff barriers. Similar provisions are contained in GATS, Article XIX.2 which states that “There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation...’

The Agreement on Agriculture provides exemptions for developing countries in respect of disciplines and obligations that apply generally. Some developing countries have taken advantage of these exemptions to implement among others, measures affecting subsidies, investments, government procurement, and food security.

Transition Periods

The second set of exemptions fall within the time frames during which reciprocal commitments and obligations are to be implemented. Time flexibility is provided for in practically all the WTO Agreements. In most cases flexibility takes the form of a slower rate of implementation of agreed commitments.

The rationale for extended implementation times for agreed measures has to do with weaknesses in the institutional capacity of developing countries, which weaknesses can be remedied over time with appropriate institutional support and capacity building measures in which technical assistance has an important role to play. The difficulty with time differentials in the context of an EU-ACP arrangement and its conformity with WTO rules, is that in the majority of cases the experience does not suggest that the extensions achieved their objective. Progress in institution building sufficient to allow developing countries to implement their obligations fully has been rare. This suggests either deficiencies in the support measures for institution building or over-optimism concerning the time required to build capacity to an acceptable level.

Reciprocity

The Lomé Conventions were all based on the principle of non-reciprocity in recognition of the disadvantaged position of the ACP countries in their trade relations with the EU. However, as stated previously, the Cotonou Agreement provides that economic partnership agreements will be negotiated which aim at a progressive removal of trade barriers between the EU and the ACP States concerned. It is intended that the EPA will establish reciprocal free trade between the EU and the ACP States concerned, in line with WTO rules on regional free trade agreements. The EU would be expected to offer immediate liberalization to ACP States while the latter would grant reciprocal liberalization to EU exports after the legally allowed transition period. Such flexibility is therefore, not a withdrawal from reciprocity; it merely provides for differential application of reciprocal trade liberalization commitments.

Reciprocity involving equivalent trade concessions for EU exports to ACP markets to those available to ACP exporters in the EU, the latter being largely duty free treatment, could have important consequences for ACP States. The effects could be either negative or positive and they could also have important implications for the regional integration processes of ACP States. In the case of the EU-South Africa Trade, Development and Cooperation Agreement (TDCA) for example, it has been observed that whereas the agreement opens up the South African market to cheaper imports from the EU thereby displacing similar imports from South Africa’s trading partners in the Southern African Customs Unions (SACU) namely, Botswana, Lesotho, Namibia and Swaziland (the BLNS countries), the TDCA will bring about no compensating improvement to the BLNS countries in their access to the EU market.⁷⁹ Beyond the implications for regional integration processes, careful examination needs to be made of the trade creation and diversion effects of reciprocity alongside the consumption effect. It is the balance of

⁷⁹ An Eurostep Briefing Paper.

all of these effects that will determine the distribution of costs and benefits of reciprocity, between producers, consumers and governments in the different countries. A non-reciprocal trade agreement between ACP and EU States can be expected to involve a lowering or even elimination of tariffs on imports into ACP States from the EU. This will have a combination of trade creation and trade diversion effects.

Most ACP countries, especially LDCs and Small States, in particular, depend heavily on customs import duties for the bulk of government revenue. They will also be interested in the fiscal effects of reciprocity, especially if reciprocity has the effect of substituting duty free imports for those that are dutiable. All ACP States will want to examine closely also the effects of reciprocity on investment and therefore, on production. All these suggest the need for ACP States to undertake careful and detailed analysis of the impact of reciprocity on their future prospects before they embark on formal negotiations with the EU.

Alternative approaches

ACP Sub-regional and regional integration processes

The formation of bilateral free trade areas between the EU and individual ACP countries places the latter at a disadvantage in terms of negotiations to defend their trade interests. The ACP Group identity is a casualty and with it there is an increased potential for unequal treatment and trade and investment diversion between the different EU-ACP agreements. Bilateral trade negotiation may also lead to complex debate among involved parties over the balancing of the spread of benefits and costs of free trade within and between the different agreements. In addition, the extensive review process in the WTO for the 70-plus separate agreements would represent a major administrative burden for all parties and the EU in particular, and become a costly exercise. The review of FTAs conducted by the WTO Committee on Regional Trade Agreements includes initial notification, examination of WTO compatibility, and biennial reporting on the operation of the agreements. Moreover, the reviews are extensive and the report on the compatibility of the agreement would be binding unless there was a consensus against it. A similar administrative burden would be faced by the EU in managing the numerous bilateral agreements.

It has been recognized that the ACP States may need to negotiate and conclude a single free trade agreement at the ACP level, probably under GATT/WTO Enabling Clause conditions (explained below), before concluding the same with the EU. An ACP free trade area would maintain the homogeneity of the ACP Group and strengthen its bargaining position in seeking better conditions from the EU as well as defending the ACP agreement in the WTO. However, it can be difficult for the ACP States to agree on a single plan and schedule for mutual free trade with similar commitments for each partner country in view of the wide differences in their levels of development and factor endowments. Moreover, the expected benefits of free trade are not likely to be seen in all ACP States, considering the wide geographical dispersion of these countries and their costly and weak transportation links.

Accordingly, an alternative option is the formation of regional and sub-regional free trade agreements within the ACP Group. In fact, the ACP Summit of Heads of State and Government recommended that the ACP Group investigate the feasibility of establishing ACP free trade areas. Work to this effect is already advanced in most ACP regions as attested by the free trade programme of CARICOM in the Caribbean and its movement towards the creation of a single market, the sub-regional groupings in Africa like ECOWAS, UEMOA, COMESA, SADC and the African Economic Community initiative at the continental level, and the Melanesian Spearhead Group among some Pacific ACP countries, as well as the initiation of work on a Pacific Free Trade Area. Fully-fledged ACP free trade groupings with the wider economic benefits they could enjoy, would then be in a stronger bargaining position to enter into free trade agreements with the EU, as in the case of the EU-MERCOSUR agreement and the ongoing EU-GCC (Gulf Cooperation Council) negotiations. This option combines the advantages of free trade areas within groups of ACP countries as a first step, and between these groups and the EU as a second step.

It is implicit in this alternative that greater EU financial and technical support should be provided to the ACP free trade areas so as to assist them and their member States in implementing their liberalization programmes in an expeditious and transparent manner and notifying them to the WTO. The ACP free trade areas would help strengthen the supply capacities and trade infrastructure of their member countries, enhance their capacity to take advantage of new trading opportunities, attract new investment and facilitate their integration into the global economy. Already the Cotonou Agreement calls for the strengthening of ACP sub-regional and regional integration processes. In fact, it underscores these arrangements as the building block for closer trade relations between the EU and the ACP States. The geographical differentiation approach however, has a major disadvantage in that it undermines the solidarity of the ACP Group. It also suffers from problems mentioned previously regarding the balancing of costs and benefits, and an excessive administrative burden. ACP solidarity in the past has been the source of strength to ACP countries in their negotiations with the EU. They will wish to maintain this solidarity whatever form the negotiations take.

If ACP States should decide to enter into post-Cotonou arrangements with the EU in the framework of their strengthened regional economic groupings, then the GATT/WTO 1979 Enabling Clause, more formally called the “Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries Decision of 28 November 1979,” which has not been affected by the Uruguay Round and continues to operate in its original form, provides the legal coverage. Paragraph 1 of the Enabling Clause allows WTO members to provide differential and more favourable treatment to developing countries without according such treatment to other WTO members, thus deviating from the MFN principle of non-discrimination (GATT Article I). Paragraph 2 of the Enabling Clause identifies the specific situations in which this permission (legal cover) is accorded and one of these pertains to “regional trade arrangements among developing countries on a regional or global basis involving the preferential reduction or elimination of tariffs”.

Bona fide RTAs among developing countries must satisfy the following conditions stipulated in the Enabling Clause, paragraph 3, if they are to benefit from its legal provision. They shall be designed to facilitate and promote trade of members and not raise barriers or create undue difficulties for the trade of third countries. Also they shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on an MFN basis. Furthermore, they shall, in the case of such treatment accorded by a developed member to developing member be designed and, if necessary, modified to respond positively to the development, financial and trade needs of developing countries. Finally, they shall be notified to the WTO Committee on Trade and Development when they are created, modified or withdrawn. These provisions clearly offer more flexibility and are less demanding than the provisions of GATT Article XXIV as further clarified by the Understanding on the Interpretation of that Article. There is no obligation in respect of “substantially all trade” criteria. No time limitation is specified for interim agreements, and biennial reports are not required of the RTAs. The only obligation is that the developing countries members of the WTO which concluded an RTA must notify the WTO Committee on Trade and Development when the RTA is created (signed and ratified), modified or withdrawn. In such a case the Committee may establish a working party upon the request of any interested member to examine the RTA in the light of the relevant provisions of the Enabling Clause, or refer it to the WTO Committee on Regional Trade Agreements.

The Generalized System of Preferences

The various forms of reciprocal economic partnership agreements that could be elaborated between the ACP States and EU may not be suitable to all non-LDC ACP States. The Cotonou Agreement thus provides that in 2004 the EU “will 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”.

The main option in this context is that these non-LDC ACP countries could be accorded preferences under the GSP scheme of the EU which is also offered to all developing countries not members of the

ACP Group, subject to meeting certain conditions. It would however, not offer any advantage to ACP countries, particularly those most in need of GSP access, unless graduation mechanisms were simultaneously sharpened. But such a move would trigger off a challenge in the WTO on grounds of differentiation among developing countries.

A major disadvantage of the GSP option is that it would terminate the contractual EU-ACP relationship as the trade provisions would become a matter of unilateral decision by the EU and no longer subjected to joint negotiations. A major advantage is that legally *vis-à-vis* the WTO, the GSP is sanctioned by the 1979 Enabling Clause. However, to be more useful to the ACP the GSP should be more selective and result oriented than in the past. The system should be more liberal and have more scope for targeting products on which the beneficiaries have a realisable export potential. In the final analysis, the extent to which ACP States can benefit from improved conditions of access for their exports whether through tariff preferences or GSP will depend on their supply responses to these measures.

Least-Developed Countries (LDCs)

The EU has committed itself to “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”.⁸⁰ It will seek to avoid the problem of WTO consistency by extending unilateral EU trade preferences to all LDCs, including those that are not members of the ACP Group. (At this time there are nine LDCs on the UN list that are not ACP countries).⁸¹

Meanwhile in September 2000, the EU Commission tabled a proposal popularly referred to as the “Everything but Arms” (EBA) Initiative.⁸² Under this arrangement, if accepted by the EU Council of Ministers, the EU would provide duty-free access into EU markets for nearly all goods to all 48 LDCs on the list of the United Nations. Duty-free access would not be provided for arms (25 tariff lines). For three agricultural products (bananas, sugar and rice), the initiative would be implemented in three progressive steps in three years.

The EBA proposal can be seen as an enlightened step towards arresting the marginalization of the LDCs. However, the initiative has important implications for the trade of commodity dependent ACP States which, under the present arrangement, benefit from carefully structured systems of tariffs, quotas and licensing regimes. An added inevitable complication will arise from the intended reform of the EU’s Common Agricultural Policy which will focus more on a generalized lowering of guaranteed prices than on restricting imports. Thus current beneficiaries of the commodity protocols will lose out both on account of export volumes and price.

There are two key issues regarding better market access conditions for LDCs. First, there are the issues pertaining to the real value of the market access concessions that will have to be analysed in-depth, taking into account a variety of factors. These factors include: (a) product coverage, longevity and applicable rules of origin; (b) assessment of the possible increase in market access opportunities in contrast to those already available to LDCs under various arrangements; and (c) consideration of other measures that could hinder LDCs from effectively utilizing the increased market access conditions such as stringent sanitary and phytosanitary measures and technical product standards in their major markets.

⁸⁰ Cotonou Agreement, Article 37:9. This provision of the Cotonou Agreement also foresees that the new regime for LDC “will simplify and review the rules of origin, including cumulation provision that apply to [LDC] exports”.

⁸¹ Unilateral trade preferences extended by developed countries to the LDCs (but not, in the same form to other developing countries) are WTO legal under paragraph 2 (d) of the 1979 Enabling Clause, allowing for “special treatment of the least developed among the developing countries in the context of any general or specific measures in favour of developing countries”. (GATT, BISD, 26th Supplement, p. 203, Geneva, March 1980).

⁸² For a summary of the “everything but arms” initiative, see the EU Commission’s website, at <http://www.europa.eu.int/comm/trade/miti/devel/eba.htm>.

Second, the legal framework that would underpin the trade preferences for the LDCs and provide enhanced market access conditions within the WTO has yet to be considered by the WTO membership. The LDC preferences, in terms of WTO compatibility, could be covered by the Enabling Clause. Moreover, they are consistent with the decision taken by the WTO First Ministerial Conference in 1996 on a Plan of Action for LDCs. As a follow-up to the conference's recommendations on enhanced market access for LDCs, a High-Level Meeting on Integrated Initiatives for the trade development of Least-Developed Countries Trade Development was held in October 1997. At that meeting, a number of developed countries including the EU and also some developing countries, announced their decision or intention to grant, on an autonomous basis, preferential or duty-free access to selected export products from LDCs.

B. Roadmap of Priority Issues

Some of the important challenges arising from the preceding chapter to be addressed by the ACP States from 1 January 2001 are identified below. The immediate task is for the EU and ACP States to secure a WTO waiver of the EU's obligations under GATT Article I for the continuation of Lomé-type preferences during the transitional period to December 2007 of the Cotonou Partnership Agreement. The discussion of the waiver request has so far been controversial, indicating that it does not enjoy the overwhelming support of WTO members.

A major challenge for ACP States is to introduce policies designed to enable them to take advantage of the transitional period of seven years to strengthen their institutional and entrepreneurial capacities and improve productivity and competitiveness in industrial and agricultural production. The strengthening of competitiveness and productivity also requires improving infrastructural capacities especially transport connexions with major markets. The aim should be to build a new culture for policies and enterprises to manage the transition from a non-reciprocal to a reciprocal environment. To the extent possible, maximum utilization of new facilities available within the Cotonou Agreement, such as the investment fund for the development of enterprises, should be encouraged to create capacities for supply and competitiveness (inherently linked with technological development). Seven years is a short time period for radical change in the patterns of production and export, but it is time enough to start creating the basis for agricultural and industrial transformation in ACP States and, for making a start with the identification of new potential as in services. The role of the private sector and civil society can be crucial in whether or not the approach succeeds. They should be engaged in all aspect of the process.

During the negotiations leading to the Cotonou Agreement, two key issues that emerged were the content of the new trade regime and the transitional period leading into the new dispensation. The latter has been resolved in the Cotonou Agreement but not the former. Thus, ACP States also need on an urgent basis to design the appropriate economic partnership agreements between them and the EU which respond to their trade and development needs and which would be consistent with the trend towards greater reciprocity. In general, a large share of ACP trade is conducted with the EU but, many ACP States also have important trade links with countries outside of the EU. Many have their most important trade links in their sub-regional and regional economic and trade cooperation arrangements and they will want to take great care to ensure that their arrangements with the EU are not the source of any weakening of these links. For this reason the search for options needs to go beyond the EU proposal of free trade agreements with most regions, improved GSP schemes for those non-LDC ACP States not ready to participate in an FTA, and continuation of Lomé-type preferences for LDC ACP States. Options must minimize potential costs such as revenue loss, balance of payments problems arising from the likely influx of EU imports, and compounded external indebtedness problems. The examination of options also needs to take into account the arrangements that would replace the commodity protocols, in particular those relating to sugar, beef and veal.

These options moreover should build on, reinforce and not undermine the regional integration processes in ACP regions. Regional groupings of ACP States should begin the process of identifying

their own peculiar interest which they would wish to safeguard in a relationship with the EU along with those interests that could best be promoted in solidarity with other ACP partners. In this way they might both protect the integrity of their integration processes while strengthening ACP solidarity. So far, the integration groupings have had different experiences. UEMOA has a common external tariff; COMESA plans to introduce one in 2004. In the Caribbean much progress has been achieved in terms of trade integration so that a common external tariff and single market could be feasible within seven years. This is not the case in the Pacific where discussions on the formation of an FTA have only just started.

Options must also take into account the obligations of WTO ACP member States (a in services and, in the elaboration of disciplines on trade instruments such as competition policy, intellectual property rights, trade and environment, and trade and labour standards. The latter policy instruments are identified in the Cotonou Agreement as areas for cooperation between the two parties. The objective is for ACP States to ensure that their commitments in the WTO in those areas are also reflected in the disciplines they conclude with the EU in the same areas and, moreover, the latter disciplines should not exceed (in terms of commitments) the former. In this connexion account needs to be taken also of negotiations which the ACP States are undertaking elsewhere involving non-ACP and non-EU States as for example in the Americas and in the Asia-Pacific region.

Cooperation between EU and ACP States on services and other trade policies are outlined in the Cotonou Agreement. On trade in services, GATS is reaffirmed and this is a sector in which ACP countries can be expected to achieve significant international competitiveness. The ACP States need to pay special attention to the following sectors, identified as important for the strengthening of supply capabilities: labour, business, distribution, finance, tourism, culture and construction and related engineering services.

Equally importantly, ACP States will need to take great care to protect and even enhance the integrity of the ACP Group, especially in a context in which different trade agreements for different ACP regions and different ACP Groups (LDCs, non-LDCs, those opting for an FTA and those for the enhanced GSP) are pursued.

C. Conclusion

Preparing for negotiations

The ACP States need to accelerate their work on the preparation of a negotiating mandate for the negotiations commencing in 2002. This calls for the elaboration of detailed studies on all the various elements of a possible ACP-EU relationship at the same time as the States undertake extensive discussions among themselves and within their regional groupings to agree priorities and strategies. They will bear in mind that the objective of any post-Cotonou arrangements must be to promote the development of ACP States in a way that also respects the integrity of their sub-regional and regional economic cooperation integration processes. ACP States will also wish to ensure that the arrangements they conclude protect and build upon the achievements of the successive Lomé Conventions, and the Cotonou Agreement, including the gains under the commodity protocols.

Approaches

A FTA or customs union between the ACP as a group and the EU does not appear to be a realistic option, while bilateral arrangements between the EU on the one hand and individual ACP States would, in all probability, always operate to the advantage of the EU. At the same time a large number of separate arrangements with different combinations of countries would be difficult to negotiate, cumbersome to administer and could become a source of unnecessary conflict and rivalry among ACP States. In the past, ACP solidarity has served the ACP countries well in their negotiations with the EU by providing the negotiating strength that would not otherwise be possible. The model of a joint negotiating approach has been tried and tested over several rounds of ACP-EU negotiations. ACP States will not wish to dismantle this arrangement. However, different countries and even different regions

could well have different negotiating interests, and a single ACP-EU agreement might not be able to fully accommodate all the various interests. Therefore, account will need to be taken of how, within the framework of a joint negotiating approach, the specific needs of different countries or groups of countries can be met. This suggests that studies will need to be undertaken to determine the specific negotiating interests of individual countries and groups.

Parallel negotiations

All of the ACP countries are simultaneously engaged in parallel negotiations whether among themselves to deepen their sub-regional and regional arrangements or, with other non-EU developed countries to form wider trade blocs, or both. Care will need to be taken to ensure coherency between all of these various arrangements in addition to the overriding need to ensure compatibility with WTO. In respect of the latter, account will also have to be taken of the on-going negotiations on agriculture and services and proposals to launch a millennium round.

Reciprocity

Perhaps the most major single departure envisaged in post-Cotonou arrangements concerns reciprocity. The historical special relationship between the ACP States and the EU has been characterized by its non-reciprocal trade benefit for ACP States, involving almost unlimited access to the EU market for their industrial goods and many other products with guaranteed access in respect of those covered by commodity protocols. Reciprocity can have trade creation or trade diversion effects which can be positive or negative and give rise to consumption effects. The balance of all these determine the net welfare effects of a reciprocal preferential arrangement, and the distribution of costs and benefits between producers, consumers and governments.

Detailed studies will need to be undertaken to provide ACP States with a clearer understanding of the impact that EU reciprocity would have on their development prospects and also, in respect of those states that depend disproportionately on customs import duties for government revenue, on their fiscal situation. These studies should also identify the areas in which ACP States have existing or potential competitive advantage and where trade is most constrained by EU trade barriers. It is only an arrangement that has the effect of stimulating a supply response that will bring the required benefits to the ACP countries.

V. COMPETITION, COMPETITIVENESS AND COOPERATION: PRIORITY ISSUES FOR CARICOM IN FUTURE EU-ACP TRADING ARRANGEMENTS

Introduction

The ACP Group of seventy-six developing countries signed with the European Union, a twenty-year partnership agreement in Cotonou on 23 June, 2000. This new Agreement in contrast to the Lomé Conventions which preceded it, and which accorded non-reciprocal preferential access of ACP exports to the European Union market, will be based on reciprocity. The negotiations are intended to reshape the unique EU – ACP partnership taking care to safeguard the achievements of a quarter of a century of cooperation, implemented through four successive Lomé Conventions. The challenge is to negotiate trade arrangements, which are compatible with WTO rules. The Cotonou Agreement envisages that ACP-EC trade cooperation will be based on regional economic partnership agreements (REPAs) with groups of ACP States. However, account must be taken of the complexity of these regions, which sometimes overlap, and which include countries with varying levels of development and size.

A. Context: Continuously Increasing Competition

The discussions and negotiations for post Lomé trade arrangements are taking place in a context of continuously increasing competition emanating from globalization and geo-political changes. An integral part of the current phase of globalization is the deepening and widening of the liberalization of international economic transactions. Competition on a global scale is both cause and effect of globalization and is increasingly embracing all economic activities. Advances in liberalization have facilitated the intensification of competition in both global and national markets. Economic production and activity, exchange and investment are being conducted in a milieu where there is really only one market, namely the global market rather than a catenation of national markets. Small developing countries are confronted by an intensification of competition in the global marketplace. Given the small scale of activity by firms and farms and the small size of national markets, most traded and non-traded goods and services tend to be uncompetitive in price by global standards. The imminent escalation of competition in the global market will require improved competitiveness in all economic activities in small developing countries.

Globalization

The multi-dimensional process of globalization is transforming all aspects of national and global activities and interactions at a rapid rate and in a profound way. Inherent in this process of restructuring the global economy and concomitantly national economies, is the decline or demise of some industries and products and the simultaneous creation of opportunities for new products and services. These changes are being driven by rapid technological change and innovation and are being facilitated by corporate integration through mergers and strategic alliances. The elimination and reduction of national barriers to the global movement of goods, services, capital, technology and certain types of labour is an integral part of globalization. As a seamless global economy emerges, it establishes the dominance of the global market. The existence of a global market provides a highly intensive level of competition requiring continuous innovation and improvements in efficiency to supply both new and existing products and services. This process of globalization is continually creating opportunities for exporters, which are globally competitive in cost and quality. Small, developing countries can take advantage of many of these opportunities. However, their size and level of development challenge taking advantage of these opportunities.

Geo-Politics

The nature and conduct of international relations has changed profoundly since the end of the Cold War which followed the fall of the Berlin Wall in 1989. This event had seismic implications in Europe and this is evident in a reorientation and re-dimensioning of EU policies towards Eastern Europe and the

Mediterranean states. This served to divert attention and resources to North-South issues and coincided with a re-thinking of relations between the European Union and the ACP States. The collapse of the overarching framework of the Cold War inevitably reduced the strategic importance of many developing countries and regions, including some in the ACP group. The shift in the EU's priorities coincided with a shift in the dominant paradigms of economic development, in which free market economies eschewed state intervention, preferential trade arrangements and the procreative role of foreign aid. The Lomé Conventions were founded on tenets, which emphasize a more purposive, planned, and cooperative approach by developed countries to the promotion of growth and structural transformation in developing and least developed countries. The new philosophical template, while not representing an abandonment of historical partnerships, portends an approach to economic development which is already evident in the gravamen of the Cotonou Agreement. Concomitant with negotiating a new EU – ACP partnership is a revaluation of the structure, functions and decision-making of multilateral institutions such as the IMF, the World Bank, the WTO and the UN.

Implications - Erosion of Trade Preferences

There has been a pronounced tendency among developed countries to reduce the coverage and duration of preferential trade arrangements, to resist extending preferential arrangements, even those related to the least developed countries and, a tardiness in implementing special and differential treatment to developing countries mandated in the WTO agreement. There has been an erosion of trade preferences granted by the EU to the ACP countries, because of the lowering of tariffs and removal of non-tariff barriers by the EU on a multilateral basis and, the extension of trade preferences to countries outside of the ACP group. These policies are likely to continue under the rubric of the WTO and possibly under regional and bi-lateral initiatives. There are two areas in which the ACP states continue to enjoy significant advantages, namely in clothing and textiles and in trade covered by the commodity protocols. However, these are not immune to erosion, as the benefits will be substantially reduced when the Multi-Fibre Arrangement (MFA) is phased out at the end of 2004. The rationalization of the Common Agricultural Policy (CAP) is also likely to reduce the gains that the ACP derives from the commodity protocols. If the reconfiguration of the CAP involves the reduction or elimination of guaranteed prices this will have a serious adverse impact on prices received by ACP commodity exporters. The phasing out of the MFA will remove a major stimulus to investment in the apparel and textile industry in ACP States and a key competitive advantage to ACP exports. The liberalization of temperate agriculture may take longer to come into effect, but it would be imprudent for the ACP to assume that, for example, the Sugar and Beef Protocols will still offer them advantageous prices by the end of the next decade. Other reforms contemplated include the shift of subsidies from consumers to tax-payers and this could result in price declines which would harm ACP producers while EU farmers would be cushioned by direct transfers.

B. Competitiveness: The Constraint of Small Size

The opportunities provided by globalization can only be realized if countries pursue appropriate internal economic policies. The specific package of policy measures must be designed bearing in mind the specifics of each economy. In the case of small developing countries, there are challenging obstacles and rigidities which are peculiar to this type of economy. Among the most important difficulties are the structure and operation of markets and the small size of economic entities such as firms and farms.

Structure and Operation of Small Markets

The small size of markets in small developing countries results in market structure, which are characterized by substantial imperfections. These derive from the limited number of participants and in many cases there are monopolies and oligopolies. Even where there are a large number of producers or traders, one or a few firms effectively dominate the operation of markets both in the financial as well as

the real sector. This type of market situation has several implications for resource mobilization and use, competitiveness and macroeconomic management.

1. *Resource Use, Allocation and Mobilization*

- (a) the narrowness of the market i.e. limited number of participants and/or the dominance of one institution reduces the efficiency with which resources are allocated and leads to distortions in resource use;
- (b) the lack of market driven competition leads to inefficiency and higher costs, as firms are not driven by the dynamics of competition to optimize efficiency and introduce new technology and improved production systems; a firm's international competitiveness depends on its capacity to continually innovate in production techniques and products; the national market conditions in which the company operates is a significant variable in its drive to develop its competitive advantages;
- (c) the small size and skewed structure of the market inhibits the ability of small, developing countries to garner resources from external sources, in particular private foreign investment; investors often are unaware of or do not find small, developing countries worthwhile as investment locations because of the limited size of the national market; even investment for export tends to be biased in favour of larger economies, even if they are low income and less developed;
- (d) the high import content of production and consumption, undiversified economic structure and the lack of competitive markets in small economies means that there are rigidities in resource allocation; this makes the adjustment process more difficult, and of necessity, slower than the adjustment process in larger more developed economies.

2. *Lack of Global Competitiveness*

Production costs in small developing countries in many economic activities tend to be higher than those prevailing in the global marketplace. This lack of global competitiveness increases import demand and reduces exports:

- (a) small, developing countries have severe constraints on the amount and variety of the factors of production because of their limited land area, GDP and size of population; these constraints limit the achievement of economies of scale for a wide range of products and leads to high unit costs of production; small economies tend to have a narrower range of domestic and export production because of the small size of the market and the limited range of resources; small market size also tends to cause high costs because there is often a lack of competition; in many instances the market can only support a single producer, i.e. a monopoly;
- (b) small, developing countries pay higher transportation costs because of the relatively small volume of cargo, small cargo units, and the need for breaking bulk; small, developing countries spend more on transportation and freight costs as a percentage of exports than large and developed countries; among the contributing factors are small size of vessels, small scale of cargoes and the lack of equivalent return cargo;
- (c) the efficient operation of firms is also constrained by the high cost of infrastructure that is related to indivisibilities of public administration structures and functions which every country, no matter how small, has to provide; the cost of physical infrastructure tends to be high in small, developing countries, imposing additional constraints on efficient production and distribution.

Small Size of Firms

Trade theory as explained in textbooks assumes that international trade takes place between countries in an environment of perfect competition, and trade occurs because of differences in comparative advantage which in turn derive from differences in resource endowment or technology. In this model, all firms are price-takers where each firm is too small to influence price in the world market and international trade occurs because of differences between countries, but the size of a country does not matter. However, when taking into account economies of scale, the size of a country and the size of a firm become important considerations. Very large firms, such as multinational corporations (MNCs),

operate internationally in ways very different from small firms. Most of the trade of MNCs is intra-firm trade, rather than the traditional “arm’s length” international trade conducted by smaller firms. It is estimated that intra-firm trade accounts for a substantial share of the international trade of developed countries and is also significant in developing countries. It is firms, not countries that conduct international economic transactions. Firms in small developing countries are small both by global standards and by comparison with “small” firms in large economies and multinational corporations. Except for a few sectors where economies of scale are not a significant factor, size makes a significant difference in a firm’s ability to survive and compete in the global marketplace. Small firms are at a disadvantage because they cannot realize economies of scale, are not attractive business partners, and cannot spend significant funds on marketing, market intelligence, and research and development. The small size of firms in small, developing countries has several implications, including:

1. *Economies of Scale and Scope*

Small firms in small economies, especially small developing countries, are at a major disadvantage compared to large firms. Small firms can attain neither internal economies of scale (where unit cost is influenced by the size of the firm) nor external economies of scale (where unit cost depends on the size of the industry, but not necessarily on the size of any one firm). Small firms in small, developing countries have severe difficulties in attaining “economies of scope,” i.e., economies obtained by a firm using its existing resources, skills, and technologies to create new products and/or services for export. Exposure to global competition requires small firms to invest heavily just to survive in their national market and more so in order to export. Larger firms are better able to generate new products and sources from existing organization and networks.

2. *Retarded Market Driven Competitiveness*

Small developing countries and their small markets are unlikely to foster the competitive dynamic necessary for firms (including export sectors) to achieve competitive global competitiveness. The attainment of competitive advantage is more likely to occur when the economy is large enough to sustain “clusters” of industries connected through vertical and horizontal relationships and where there is a network of related and supporting industries. A firm working together with world-class local suppliers can benefit from opportunities for cross-fertilization. Related industries can also be an important source of innovations and provide strategic alliances and joint ventures.

Constricted Economic Management

The limited size of national markets and the small size of economic entities have adverse implications for stabilization, adjustment and transformation because these structural features reduce the efficacy of conventional policy measures and narrows the range of the policy options. Stabilization policy must be designed specifically for small, developing countries taking cognizance of the structure of markets and the nature of their operations. The uncompetitive nature of these markets particularly where monopolies and oligopolies exist and the limited number and type of institutions, make resource utilization and allocation more problematic than in large developed economies. These types of market situations are characterized by rigidities, which make the adjustment process more time consuming, and which diminish the efficacy of conventional policy measures such as open market operations and recalibration of economy-wide prices such as the exchange rate. Furthermore, structural adjustment, like stabilization is a more difficult process in small, developing countries because the inherent rigidities in the structure and operation of markets complicate the process of resource reallocation. The nature of these small markets also restricts the ability of private sector entities and the government to mobilize additional resources, both within these economies and from external sources.

Small, developing countries have structural features that need to be changed, if these economies are to cope with the rapid and profound changes associated with globalization. Adjustment will not suffice to enable these economies to cope with changes in the global economy since adjustment implies

marginal and incremental modification to an economic structure, which is fundamentally sound and conducive to sustainable economic growth. Economic transformation goes beyond the resource utilization, reallocation and mobilization intrinsic in stabilization and structural adjustment to incorporate resource creation over the medium to long term. Transformation in the current and future global economy will entail the ability of small developing countries to participate in and facilitate the rapid and friction-less international mobility of goods, services, finance, capital and technology which is the essence of a seamless global economy.

The challenge in this context is how to formulate and implement economic policy that permits small developing countries to respond to globalization in a way that ensures sustainable economic development.

C. Cooperation

The changes involved in globalization are so profound that the implications for small, developing countries cannot be addressed only by having sound, conventional, national economic policy. While this is necessary, the response is a developmental issue rather than an economic management issue. An appropriate response by small developing countries to globalization is a development strategy that is best described as strategic global repositioning (SGP). Strategic global repositioning is a process of repositioning a country in the global economy and world affairs by implementing a strategic medium to long-term plan formulated from continuous dialogue between the public sector, private sector, academic community and the social sector. It involves proactive structural and institutional transformation (not merely adjustment) focused on improvement and diversification of exports and international economic and political relations. Achieving SGR therefore requires changes in both internal and external relations. The external relations are of paramount importance because of the highly open and vulnerable nature of these small, developing countries. The new EU-ACP trade arrangements can be an important aspect of the external economic environment by fostering and facilitating strategic global repositioning of the small developing countries of CARICOM.

National Policy Response – Strategic Global Positioning

An integral part of strategic global repositioning will be export diversification encompassing the development of new exports e.g. informatics, and improving competitiveness and productivity in existing export sectors. Some foreign exchange earning sectors such as tourism will have to undertake a continual process of adjusting their product mix to shifting demands e.g. increased travel by older and retired people. Traditional export commodities may not be viable and face the alternative of being phased out or be used as inputs in higher valued added goods such as rum. The experience of some small states in making the transition from economies based on the export of a single agricultural commodity to ones in which tourism is the core activity is encouraging.

The only certainty in tomorrow's global economy is change and change at an exponential rate, which makes speedy decision-making and implementation an essential aspect of life in the future. The ability to discern changes, to adopt and adapt to new technology, and to reorganize rapidly will ultimately determine one's capacity to respond. Firms, governments, and individuals must get accustomed to a lack of permanence and recognize that it presents challenges and opportunities. The countries that achieve economic development, practice "proactive adjustment," by adjusting rapidly in anticipation of global changes in demand and technology. Defensive and reactive adjustment, which aims to preserve industries or to retain aspects of production, which are uncompetitive, is self-defeating. In the short run, reactive adjustment reduces the competitiveness of exports and increases prices of domestic goods. In the long run, entrepreneurs will find ways to import cheaper alternatives and will relocate inefficient production to other countries in order to retain international competitiveness.

Today, there is only one market, the global market, from which no country is isolated. Since all firms in small developing countries are small by global standards, their survival even in national markets will increasingly depend on strategic corporate alliances and “constellations.” Strategic corporate alliances have made it possible for networks of small firms to overcome the limitations of size and compete effectively by: (a) specializing in a single aspect of production or distribution; (b) capitalizing on specific market niches where economies of scale are not a determinant of competitiveness; and (c) concentrating on the “economies of speed” which are now more important than the economies of scale.

Increasingly, the world economy will be dominated by knowledge-based industries, especially services, making the quality of human capital a critical factor. The productivity of labour (workers and managers) will have to be upgraded, and this means improvement in the quantity and quality of education. The importance of this is illustrated by the experience of the East Asian countries, where the expansion and transformation of education and training during the last three decades has been a key factor in their economic growth. Making the workforce more knowledgeable and productive involves better education both within the individual enterprise and in the society as a whole. In many developing countries, much of their human capital resides outside of their borders. Every effort must be made to repatriate skilled nationals, as this is the quickest way to improve the quality of the workforce. Incentives and special programmes must be established to induce overseas nationals with professional skills to return home.

External Economic Environment – EU-ACP Cooperation

Internal economic reform and structural adjustment is a necessary but not sufficient condition for promoting growth in small developing countries and, because of the high degree of openness, internal changes can only come to fruition if complemented by an external economic environment. The most efficient and internationally competitive products from small developing countries cannot become exports unless there is access to global markets and the markets of developed economies. Therefore, internal reform and structural adjustment and liberalization of trade at the global level, particularly in developed countries are inseparable aspects of the same process which must be achieved in order to promote the well being of small developing countries. The Lomé Conventions have sought to promote the growth of developing countries by providing preferential trade arrangements to the ACP countries with regard to access to the EU market, the operation of special commodity price support and marketing mechanisms and the provision of development assistance.

D. Lomé Convention/Cotonou Agreement

The trade aspects of the Lomé IV agreement remains in force for a preparatory period from 2000 to 2008, after which, new WTO compatible arrangements will commence, involving a transitional period of at least 12 years. The Cotonou Agreement is built on the understanding that formal negotiations for new trading arrangements will commence in September 2002. These negotiations must identify the most appropriate arrangements for promoting the development of the ACP countries taking into account their level of development while safeguarding and strengthening sub-regional economic integration processes. Among the policy measures, which ACP/EU negotiations envision are the creation of economic partnership agreements which may, after a stipulated time, establish reciprocal trade between the EU and the ACP and which must be WTO compatible.

World Trade Organization Waiver

It is important that the ACP and EU continue building a consensus within the WTO in support of a waiver. Achieving such a consensus will require the overcoming of a number of possible objections from a range of countries including developing countries and transition economies. Perhaps the most virulent opposition emanates from some developing countries that were successful in having the EU banana regime ruled incompatible with the WTO Agreement. This opposition is unlikely to be assuaged

until a banana regime is established by the EU which is agreeable to all parties. Given the complexity of this issue it is difficult to predict when such a resolution will take place. It is vital that any WTO waiver be formulated in a manner which ensures support for all those facets of the current trade regime which are important to the ACP countries. This may entail a degree of specificity which will make the task of achieving a consensus more difficult because it will reduce the scope for compromise.

Implementation

In order for ACP countries to attain the benefits of the existing ACP/EU agreement and the new ingredients contained in the Cotonou Agreement, there must be a concerted effort at the implementation. The provisions on tourism, rum and rice are of special interest to CARICOM. The EU and ACP countries elaborate the themes included in the article of tourism into a programme of project lending. The CARICOM countries are especially interested in the sustainable development of tourism, strengthening linkages between the tourism industry and other sectors and improving the viability and competitiveness of small and medium term enterprises.

The Investment Facility must be made to operate in an optimal not minimalist way. Strategic global repositioning requires financing from the public sector and from private sector sources both domestic and foreign. While facing the difficulties of a lack of visibility and small market size, private sector investment needs can be met in part from inflows of private foreign investment. This is a possibility given the enormous financial resources available in global capital markets but requires macroeconomic policies that provide stability and a business environment conducive to investment. Mobilizing private capital is constrained by the fact that even with impeccable policies, small developing countries are perceived by private investors as more risky than large developing countries. The operation of the Investment Facility could alleviate some of the disadvantages faced by small developing countries in global financial markets.

Reform of Development Finance

Governments will have to upgrade and expand infrastructure and institutional capacity in a manner and at a pace, which complements and supports private sector activity. Public sector investment on a scale necessary for successful strategic global repositioning may be beyond the capacity of governments to garner sufficient resources through local borrowing and taxation. Raising additional funds from external sources will be critical, particularly development financing. However, the financing needed for strategic global repositioning cannot be adequately met either by project-oriented bilateral development assistance or by structural adjustment lending of multilateral financial institutions, as neither is designed for this purpose. A new kind of long-term development financing facility should be explored to facilitate programmes of strategic global repositioning.

Multilateral financial institutions and bilateral development assistance agencies have focused almost exclusively on per capita income as a criterion for classifying developing countries. This has resulted in the graduation from concessionary lending of many small developing countries. Instead, lending criteria must be extended to take account of vulnerability and constrained adjustment capacity which are characteristic of small developing economies, thereby enabling these countries to be eligible for concessionary funding.

The complex and time-consuming procedures for implementing the Lomé Convention have been responsible for a mass of unused resources, and prompted the ACP-EU negotiators to reform the financial cooperation arrangements. Guiding principles were established, most notably for more efficient cooperation instruments, and for a revision of the planning system and simplification of implementation procedures. The reform of the ACP-EU development finance cooperation system represents a major step towards increased efficiency, flexibility and coherence. It will offer an opportunity to optimize the use of resources available for development. The internal reforms underway within the European Commission will also contribute to improving the quality and efficiency of the process.

E. Future EU – ACP Trade Arrangements

The priority issues from the perspective of the small developing countries of the CARICOM fall into two categories, first, ensuring the continued existence and implementation of all the trade provisions, in particular the integrity of the commodity protocols. Second, ensuring that the Cotonou agreement and subsequent arrangements promote development and structural transformation of all ACP countries while remaining sensitive to the requirements of small developing countries. The ability to ensure a successful outcome from future EU – ACP trade arrangements depends on building on a foundation of certain general principles.

General Principles

The general principles include the following:

1. *Single Agreement*

The arrangement must be a single agreement based on a core of obligations, disciplines and rights with variations to address the needs and concerns of different types of economies and/or different sub-regional economic groups. This is preferable to a series of economic partnership agreements based purely on geographic regions since these regions will include different types of developing economies whose specific needs may differ significantly. This approach also has the significant advantage of not dismembering the long-standing coalition of the ACP group. Any disaggregation of the ACP group would only serve to complicate the negotiating process and could even create a contentious atmosphere which could be disruptive to the negotiating process. The continuity of tried and proven existing negotiating structures and the benefit of an established “culture” of negotiation are worth preserving.

2. *Holistic Developmental Paradigm*

The agreement should be holistic in its ambit and developmental in its philosophy, incorporating new approaches to existing trade issues, building on new trade issues such as services and maintaining adequate levels and appropriate forms of development financing. While the traditional form of trade preferences extended by the EU to the ACP may not continue beyond the expiration of Lomé IV, there is no reason to abandon the concept and practice of using trade preferences to promote economic development. Consideration should also be given to the formulation of new instruments for promoting the trade and development of ACP countries, for example, the extension of special consideration for small producers and new entrants to the market. It is also important to ensure that new forms of market barriers are excluded from a future EU-ACP trade arrangement. For example, anti-dumping measures and standards must be development-oriented, rather than protectionist. The design of suitable arrangements is possible because multilateral disciplines such as the General Agreement on Trade in Services (GATS), trade related investment measures (TRIMs) and trade related aspects of intellectual property rights (TRIPS) are still in their early stage of development. In the case of these issues, the ACP-EU negotiations should not await developments in the WTO. Provisions for preferential treatment in post Lomé arrangements and in regional integration schemes could form part of the inputs which guide the evolution of WTO accords in these areas.

3. *Wider Participatory Approach*

Continuing to encourage the participation of civil society at the national level, in particular business organizations, trade unions and non-governmental organizations, should strengthen the process of negotiation. The new trade arrangements are not appropriate mechanisms for dealing with questions related to forms of governance, democracy and human rights.

4. Collaborative Advantage

Cooperation between the EU and the ACP countries has been beneficial to both sides. Revamping and reinvigorating a new economic partnership agreement can create collaborative advantage. Not only will the partners derive tangible benefits but this partnership can and should foster collaboration, leading to the creation of new economic activity i.e. investment and production in addition to the expansion of trade.

5. Compatibility

It is likely that the future EU-ACP trade arrangements will be based on reciprocity and should therefore be WTO compatible without the necessity of asking for a waiver. However, WTO compatibility is a moving target because of the ongoing negotiations on the “built-in agenda” i.e. mandated negotiations on services and agriculture. In the future there is also the possibility of new developments in intellectual property rights, investment, government procurement, and competition policy. Some of these developments may occur before the negotiations for new EU-ACP trading arrangements are completed. Most ACP countries including the CARICOM countries, are participants in a range of regional and bilateral trade agreements, many of which are based on the principle of preferential non-reciprocal arrangements. In the case of CARICOM, these include its own internal arrangements (CARICOM single market economy) as well as the Caribbean Basin Initiative (CBI) with the United States. In addition, the countries are actively involved in the negotiation of a Free Trade Area of the Americas (FTAA), still in the early stages of discussion, which is intended to be a free trade agreement with provisions for differentiated treatment. These negotiations are scheduled to be completed in 2005 and if this is achieved it will further raise the question of the compatibility of the EU-ACP arrangement, the FTAA, the WTO, regional integration schemes and bilateral trade agreements.

Priority Issues for Future Trade Arrangements

The future trade arrangements between the EU and the ACP must address the following issues:

1. Reciprocity

The Lomé Conventions were based on the principle of non-reciprocity as a means of fostering growth of the ACP economies. Although bound by current WTO rules the EU has reaffirmed its commitment to supporting the development efforts of the ACP countries by maintaining existing trade provisions during a transition period. No single criterion would distinguish all ACP States as a separate category. Such separation has prompted the EU to offer the ACP States, and only the ACP States, improved terms under the GSP. Without it, the EU would have to generalize the improvements to a range of other developing countries. This would undermine the objective of providing a competitive advantage to ACP States. A combination of criteria can be devised which would permit the inclusion of all ACP States but exclude most others. It would involve a combination of income, vulnerability and size as the determinants of a group of states deserving of special treatment.

The design of the mechanisms, which will eventually lead to reciprocity, must be based on a detailed analysis of the implications of reciprocity for the ACP countries. The effects are both negative and positive and therefore balancing these effects in a way which boosts the trade and development of ACP countries, will require careful calibration. In analyzing the trade impact of reciprocity in each scenario the potential trade effects are estimated as the follows:

- (a) the consumption effect of trade creation may occur where consumers of raw materials, intermediate goods and final products benefit from a fall in import prices as less expensive European imports are substituted for local and regional goods; this is a positive effect from the point of view of consumer and producer welfare;

- (b) the production effect of trade creation may occur where EU imports displace higher cost domestic production and intra-regional exports; this is a positive effect since it facilitates a more efficient allocation of resources in the countries involved;
- (c) the trade diversion effect may occur where EU imports replace cheaper imports from third countries, producing a negative effect; and
- (d) there are also dynamic effects which result when CARICOM producers take advantage of the economies of scale created by participation in a larger market.

A detailed empirical analysis of the impact of reciprocity on production, investment and fiscal revenues is a prerequisite to informed negotiations. Such an analysis is seriously hampered by the lack of disaggregated production data for many countries, including some in the CARICOM region. Preliminary evaluations indicate that the trade and fiscal effects of reciprocity are negative and the consumer welfare gains are small. The completion of the study must be awaited to fully gauge the effects of reciprocity. Accordingly, the option of trade arrangements between the EU and the ACP States, which combines reciprocal and non-reciprocal elements, must be thoroughly examined before the formal negotiations begin. While the onus may be on the ACP countries, it is in the interest of all concerned that the EU should fund the necessary studies and allow the ACP to choose the technical experts.

There is no single definition of reciprocity, (certainly not in existing trade agreements which acknowledge that participating countries are at different levels of development), in which the term is taken to connote an identical exchange of concessions. Reciprocity in the final analysis exists when all parties are satisfied with the exchange of concessions.

2. *Special and Differential Treatment*

Trade liberalization is a necessary but not sufficient condition for growth. Trade liberalization creates opportunities, which only come to fruition with external market access and investment. The global economic environment must be complementary to the internal economic policies of small, developing countries in order to ensure their growth, development and resilience. An integral part of the global economic situation will be the principles on which multilateral, regional and bilateral trade agreements are based. The appropriate principle is that of special and differential treatment which was widely recognized when the GATT was established. This took the form of preferential access to developed country markets through tariff preferences and exemptions from GATT rules. In 1965, the special status of a developing country in the multilateral trading system was established with the adoption of a new Part IV of the GATT, which embodied what was termed "special and differential treatment." Subsequently, the principle of special and differential treatment in the form of long-term or transitional non-reciprocity is embodied in the WTO Uruguay Round Agreements, successive Lomé Conventions, the Caribbean Basin Initiative, CARIBCAN, the CARICOM, the CARICOM-Venezuela Agreement and the CARICOM-Columbia Agreement. The Cotonou agreement mandates "special treatment" by "specific provisions and measures" for "island ACP States" taking into account the vulnerability of small, landlocked and island countries."

The design of measures to address the concerns and interests of small developing countries of CARICOM should not be limited to measures which avoid putting them at a disadvantage but, should be proactive in promoting the growth and development of smaller economies. For example, Article IV of the GATS specifies measures aimed at increasing the participation of developing countries in the global trade in services through specific commitments in relation to strengthening their domestic services, their efficiency, capacity and competitiveness. It also requires developed member countries to facilitate the access of developing country service suppliers to information related to market access.

Special and differential treatment for ACP countries must involve allowing them to undertake commitments to the extent consistent with their adjustment capacity, development, financial and trade needs and their administrative and institutional capabilities for implementation. These concessions should be negotiated on an issue-by-issue basis and where appropriate, a product-by-product basis.

Small developing economies should also be permitted some exemptions. This would not only address the question of disparities, but also avoid situations where small developing countries, despite their best efforts, were not able to meet certain requirements and timetables. For example, if as is likely, export subsidies are outlawed, smaller economies should be exempted from this requirement. Where complete exemptions are not feasible, de minimus provisions would be helpful.

3. *Asymmetrically Phased Implementation Timetables*

Given the small size of firms in smaller economies, the small scale of production and the limited size of the market, export sectors will require a longer period of adjustment than larger firms and larger, more developed economies. Hence, there must be asymmetrically phased implementation of rules and disciplines, permitting a longer adjustment period for smaller economies. For example, in agricultural trade, in particular food items, smaller economies should be allowed the flexibility to implement their commitments to reduction of protection and domestic support over a longer period than the implementation period prescribed for larger economies.

The EU must ensure that the implementation of special and differential treatment promises the development of the ACP countries by the following:

- (a) larger economies should whenever possible, provide measures and accept timetables, which provide easement to ACP economies; for example, careful regard should be given by developed countries to the peculiar situation of small developing countries when considering the imposition of antidumping duties; larger, more developed economies should be required to explore the possibility of constructive remedies before imposing duties where they would affect the essential interests of smaller economies;
- (b) where flexibility is provided there should be some criteria to assess the extent to which smaller economies are making adequate efforts; for example, when small developing countries have achieved "export competitiveness" in a given product they should be expected to phase out concessions over an extended period.

4. *Encompassing New Trade Issues*

The EU has proposed that new trade issues should be introduced through the establishment of the Regional Economic Partnership Agreements (REPAs). These 'new issues' include policies on trade in services (including rights of establishment), competition policy and intellectual property rights. The ACP will certainly be interested in ensuring improved and secure market access in the EU for services given the importance of services as a source of foreign exchange earnings for many ACP countries. The small developing countries of the CARICOM are service-oriented economies and are likely to become more so in the future. Tourism and offshore financial services are of particular significance in the region and the prospects are encouraging for informatics, health care, entertainment and a range of commercial services. Attention must be given to the issue of modes of supply, particularly commercial presence and the temporary movement of service providers.

Member states should accord to services and service suppliers of all states access to their markets across all modes of supply. The EU should facilitate the development and strengthening of services trade in the ACP countries by:

- (a) providing increased access to technology to enhance efficiency, and competitiveness (specifically in the area of services which has been revolutionized by the advent of the internet, e-commerce, etc.);
- (b) improving access to distribution channels and information networks;
- (c) liberalizing market access in sectors and modes of supply of interest to them (for example, movement of natural persons); and
- (d) special sensitivity should be applied to small developing countries given the serious difficulty faced by small firms.

Competition policy must be discussed in full cognizance of the enormous disparities in the size of firms, farms and other economic units, not only in the export sectors but throughout all the economies. The fundamental reality which must be addressed by any regime of national or transnational competition rules is that all nationally owned firms in small developing countries are small by comparison with economic entities from or in developed countries such as those of the EU.

5. *Balance-of-Payments Adjustment*

Small economies are highly open economies and are therefore more susceptible to balance of payments problems. This is particularly the case for small, developing countries where balance of payments deficits tend to be persistent because of their structural origins. Trade agreements should include provisions and financing facilities to assist countries to adjust to trade fluctuations in export earnings. The Cotonou agreement does recognize the importance of financing short-term fluctuations in export earnings. The eligibility criteria need to be reviewed to establish thresholds specifically for small developing countries. These economies because of their acute vulnerability to trade disruptions, should be permitted additional facilities to enable them to:

- (a) maintain sufficient flexibility in their tariff structure and schedule of liberalization to permit the establishment, stabilization or rehabilitation of a particular industry; and
- (b) apply quantitative restrictions for balance-of-payments purposes which take full account of the high inelasticity of demand for imports and import surges.

6. *Technical Assistance for Capacity Building*

The small developing countries and other ACP countries must improve their capacity to mediate their encounter with the global economy, an important aspect of which is negotiating new trade agreements and revising and updating existing agreements. Technical assistance for capacity building in trade negotiations should aim to:

- (a) promote the development of adequate institutional capacity to improve their preparation for and to conduct negotiations e.g. with the EU;
- (b) contribute to efforts of ACP countries to undertake the structural, institutional and legislative adjustments;
- (c) assist small economies to fulfil their obligations under the various international agreements, in particular, commitments under the WTO and a future EU – ACP trade arrangement;
- (d) ensure that ACP countries can overcome (i) their limited capability to make use of the dispute settlement mechanisms in the WTO and other trade agreements by improving expertise and institutional capacity, and (ii) the high cost and administrative difficulties of using the dispute settlement mechanism;
- (e) enhance the capability of the private sector to take advantage of the opportunities created by trade liberalization; and
- (f) provide when required technical assistance in order to identify capacity building needs and the methodology to access available funds.

Capacity building for negotiations with the EU and on the built-in agenda in the WTO is urgently needed and could be addressed through the Cotonou agreement. Earmarking and dispensing resources for this purpose must receive immediate attention given that the WTO process has been going for nearly a year and the negotiations with EU are due to start in less than two years. The problem which constrains the financing of capacity building is that there is no budget allocated specifically for this purpose. If meaningful progress is going to be attained in capacity building then the analysis of needs and the identification of resources must be on a “fast track.”

7. Dispute Resolution Mechanism

Any new EU-ACP trade arrangement will encompass new disciplines and a larger number of trade issues. In such a complex arrangement it will be necessary to establish a dispute settlement mechanism, as disputes cannot be arbitrarily settled by one group of partners.

VI. ELEMENTS OF A WORK PROGRAMME FOR TRADE NEGOTIATIONS AND CAPACITY BUILDING

Summary

- *From Lomé to Cotonou* - The ACP States have a ‘special’ relationship with the EC that stretches back more than two decades. However, both partners are far from satisfied with the management of that relationship, and even less satisfied with the progress which has been made in improving living standards in the ACP States. The new Partnership Agreement, signed earlier this year, marks the first stage in a quite dramatic transformation of the previous Lomé arrangements but it is still a half-way house in that, on the trade side at least, it represents an ‘agreement to agree’ that a new trade regime is to be put in place by the end of 2007.
- *The Rise to Prominence of Capacity Building* - An important change was signalled on the development co-operation side too. Although the increased importance attached to ‘capacity building’ might appear to be just a shift in emphasis, in fact it provides a formula for much closer involvement in ACP States’ affairs than might have been contemplated under previous Conventions. In principle, this might be justified because capacity building is designed to do precisely what is wanted – “a process to enhance abilities to identify and meet development challenges in a sustainable manner”. In practice, experience shows capacity building to be not just a difficult-to-manage, resource-intensive, tool of development assistance but, one whose success relies on long term commitment and high levels of trust between the partners.
- *The Partnership Agreement and the Limits to Capacity Building* - Whilst the need for capacity building is an important thread running right through the new Agreement it is remarkably silent on modalities. Any capacity building activity having a positive effect on development appears to be eligible for assistance. For example it seems that there could be support for capacity building measures to prepare for the negotiations on the new trade regime (due to start in 2002). Unsurprisingly, the real constraint on the scope for such capacity building activities is financial. Since there is no specific capacity-building budget it is evident that these activities are to be supported essentially by allocations from the ‘programmable’ elements of the Agreement’s financial package - that is from National Indicative Programmes or from Regional Indicative Programmes. It follows immediately, unless some special ‘fast track’ mechanism is put in place, that access to funds for capacity building could be some way off. Almost certainly too late to be used to support a meaningful input to the imminent negotiations with the EC.
- *What Capacity Building?* - The immediate challenge is to make best use of the financial resources on offer. It is not just the difficulty in making an appropriate division of the funds between more traditional projects and programmes and capacity building. There is the further choice between capacity building aimed at improving the outcome of negotiations, and capacity building aimed at overcoming the supply side constraints which continue to limit the possibilities of benefiting from the successfully negotiation of an improved trade agreement.

Introduction

In June 2000 in Cotonou (Benin) the African, Caribbean and Pacific States (“the ACP States”) signed a new Partnership Agreement with the European Community (“the EC”) and its member states, popularly known as the ‘Cotonou Agreement’. That agreement is the most recent in a long line of cooperation agreements between the two parties and can be traced back through 25 years of Lomé Conventions, and before that to the original Yaoundé Agreement of 1964.

As that history of agreements suggests the ACP States and the EC have been in the development business together for a long time. Both sides have openly conceded that the results of their 35year

cooperative relationship have not been as positive as they or their citizens would have wished, or indeed thought would be the case. Doubtless the EC has found it all very discouraging, the more so as in large part it has been responsible for the design of the development model and the focus of the projects and programmes.⁸³ Clearly things did not go to plan. Through it all the EC took the initiative, proposing the shifts in direction and initiative that are so evident in the successive agreements, and yet after so much endeavour the ACP States as a whole are little better off than they were at the start in terms of their trading performance. For the ACP States it must have been a deeply frustrating experience.

This new agreement presents yet another opportunity, and the huge task for the ACP States this time will be to seize it and craft a set of arrangements that will truly assist their development efforts, from what is essentially still only 'an agreement to agree' in terms of trade.

From the perspective of economic and trade development, the defining characteristic of ACP-EC cooperation as envisaged in the new Partnership Agreement is the emphasis on 'capacity building' as a development tool – and perhaps also as an end in itself. The previous agreements did provide for 'technical cooperation' and 'institutional strengthening', in addition to projects and programmes. However, there is now an explicit recognition that the success of such projects and programmes may in large part depend upon the functioning of the overall 'enabling environment' of institutions, regulatory framework, legal system and private/public sector networks in which they are to operate.⁸⁴ Hence, the emphasis is on developing and strengthening that environment.

In order for the cooperation on capacity building to be effective, the EC has been afforded a far deeper penetration into the ACP States' formulation of policy than previously. However, if the ACP States are to retain proper control of their own economic development process then it will be necessary for them to prepare for the use of the capacity building measures and make sure they serve their needs. As a start, some work will be required on establishing the appropriate balance between resources for capacity building and those for the more traditional projects and programmes. Much work will be required to identify what and where capacities should be built in order to secure a good developmental return on the investment. A considerable amount of work will be required to design the means of building the capacities so as to ensure that the result can be sustained and will continue to produce benefits after the EC's intervention has ceased. Without such preparation and control the capacity building measures in the Partnership Agreement have the potential to be an unprecedented systematic intrusion into the ACP States' domestic affairs.

Unfortunately there is very little time. For even before the ACP States can really begin to work on fashioning the capacity building measures into a tool for their development, they need first to work on their proposals for the new trade arrangements that have to be presented to the EC by September 2002. The Partnership Agreement is incomplete and new trade arrangements have to be negotiated in accordance with the 'built in' timetable. Ideally, the ACP States should first be carrying out the preparatory work to identify capacity 'gaps' in their development plans, then assessing how to take advantage of the capacity building measures so as to reduce them, before moving on to programme design and implementation.

However, the ACP States may not have the luxury of proceeding in such a logical order. They may require capacity building measures to prepare and conduct the forthcoming negotiations with the EC before they have had the opportunity to carry out the necessary preparatory work. A considerable amount of work has indeed already been undertaken by and on behalf of the ACP States on the EC's proposals but, if they are to have proposals to put on the table, they now face the more challenging task

⁸³ See in the Commission's, 'Green Paper on relations between the European Union and the ACP countries on the eve of the 21st century: challenges and options for a new partnership'; COM(96) 570 final of 20 Nov. 1996.

⁸⁴ "Evaluations of Community financial aid in the ACP countries often showed that insufficient account had been taken of the institutional and policy context in the partner country. This, too often, has undermined the viability and the effectiveness of cooperation"; Commission Statement, 'The new ECP-EU Agreement', 2000, p.1.

of designing their own model, bearing in mind the other international trade agreements they are seeking to negotiate or conclude and, their own emerging regional trade agreements.

The purpose of this chapter is twofold. One task is to examine the capacity building provisions of the Partnership Agreement and consider their implications. The other is to discuss their potent use of those provisions, both to prepare the ACP States proposals for the forthcoming trade negotiations with the EC and fortify their own position in the negotiations and to address the supply side constraints that continue to impede the ACP States' export efforts.

A. Overview of Technical Support and Capacity Building Provisions in the Partnership Agreement

Understanding Capacity Building and its Implications

The term 'capacity building' is a comparatively new one in the development lexicon – having emerged in the 1980s – although it is not necessarily an entirely new concept or activity.⁸⁵ It is also a relatively elastic term. Different multilateral agencies and donors have tended to operate to their own definition and at various points in what is a very broad spectrum of activity. However, there is though convergence on some of the major characteristics of the approach and a definition that captures many elements of definitions currently in use is: *“Capacity building is a process by which individuals, groups, institutions, organizations and societies enhance their abilities to identify and meet development challenges in a sustainable manner”*.⁸⁶

Fundamentally, capacity building is about enabling change and transformation to take place. A shift, which might operate at a number of levels, from individuals right up to the country and regional levels; and capacity building also addresses relationships between and across such levels. Furthermore, it is undoubtedly a description of an activity.⁸⁷ The ultimate purpose of capacity building is a tool to help achieve sustainable social and economic development.

It follows from this meaning of the term that the capacity building measures included in the Partnership Agreement do not exist in an ideological vacuum. Not only is there already a considerable amount of material on the role of capacity building in development but, more importantly for present purposes, there are numerous capacity building programmes in the ACP States themselves from which it is possible to gauge some of the challenges that may lie ahead.⁸⁸ However, the ACP and the EC are proposing to do far more than operate a series of programmes to boost the ACP States' capacity in a number of key areas. What is intended is the use of their 'special relationship' with the EC, suitably deepened by dialogue with 'non-government actors' across the board, to engage in a concerted attack on poverty and the causes of poverty in ACP States, with capacity building as the major weapon in the armoury.

⁸⁵ See the useful exhibit 2.1, 'Conceptual Predecessors to Capacity Development' in, Lusthaus C., Adrien M-H, and Perstinger M, "Capacity Development: Definitions, Issues and Implications for Planning, Monitoring and Evaluation", *Universalis*, September 1999.

⁸⁶ CIDA, P.B. (1996); Capacity development: the concept and its implementation in the CIDA context; Hull: CIDA.

⁸⁷ The multi-layer, cross-cutting characteristics of capacity building is recognized in UNDP's framework for providing technical assistance for capacity building, which encompasses four interrelated dimensions: individual; entity; interrelationships between entities and the enabling environment.

⁸⁸ Such programmes have involved at some point or other all the multilateral agencies, but in particular at the moment ITC, UNCTAD and WTO through the Joint Integrated Technical Assistance Programme for Selected Least Developed and Other African Countries (JITAP). A helpful report on capacity building issues is: Schaumburg-Müller H, "Evaluating Capacity Building, Donor Support and Experiences", Report for the DAC Expert Group on Aid Evaluation (1996), OECD.

The Commission's statement on EC development policy states:

“Enhanced market access and an improved trading environment are not sufficient. Experience has shown that many countries are unable to benefit from the opportunities offered due to capacity constraints of a government, infrastructure or resource nature. It is therefore essential that the core trade policy elements be supported by in particular trade related technical assistance for capacity building. Hence, apart from market access issues, including its non-tariff aspects, the Community should also address supply-side constraints and competitiveness, trade related areas, trade development measures, technology transfers, access to information and global networks, strategies to promote investment and private sector development”.⁸⁹

That suggests that capacity building – through providing training, setting up networks, developing and improving procedures, facilitating institutional and legislative reform and a raft of other activities⁹⁰ – will provide in an integrated way the missing connexions between needs and resources. In other words, it will be an instrument for ‘joined up development’.

Even before considering how such a grand plan could be made to work, it is important to recognise the many challenges it might bring for both the ACP States and the EC. It should go without saying that even to move ‘some of the way’ to realizing those objectives is likely to require a radical departure from the way in which assistance has previously been provided by the EC to the ACP States.

The ACP States will need to assume a greater degree of responsibility for the identification and design of the capacity building interventions, as well as the coordination of ‘donor resources’.⁹¹ For political reasons it would be important for them to maintain control over a process that could feed directly into policy formulation. Taking on that responsibility will require the ACP States to find ways and means to: audit their own resources and identify gaps in their capacity to deliver; formulate an effective strategy for satisfying those needs; put in place monitoring and evaluation systems. This does not seem to have happened before to any great extent. For example, according to an ECDPM study,⁹² only eight countries specifically allocated national indicative programme (NIP) resources for trade development under Lomé IV. Furthermore, linkages with marketing and distribution networks were often missed in sectoral projects such as agriculture and rural development. Therefore, some capacity building is likely to be required and / or some technical assistance from outside. Nonetheless, it would be important for the ACP States to have ‘ownership’⁹³ of this process in order to best develop their capacities and also to improve the chances of the intervention being sustainable. Fully engaging in the

⁸⁹ Commission, “Communication from the Commission to the Council and the European Parliament: The European Community’s Development Policy”, 26 April 2000, COM(2000) 212 final.

⁹⁰ The following are specific donor funded interventions in those areas taken from the Caribbean region: (1) training in the preparation of project proposals and loan applications to the Caribbean Development Bank; (2) Barbados business forum; (3) improving the efficiency of income tax collection in the Eastern Caribbean; (4) facilitating the process of tariff harmonisation in the Eastern Caribbean; and (5) producing Caribbean commercial law reports and disseminating commentaries on issues in Caribbean commercial and trade law.

⁹¹ “Because donor coordination by donors is a Prisoner’s Dilemma, the only effective donor coordination will occur when the recipient coordinates the donors”; Paterson T, ‘Getting the Most Bang for Their Buck: Towards Winning Strategies for Eastern Caribbean Countries Playing the Aid Game’, *Caribbean Writings on Caribbean Issues*; (1995), ed. Monya Anyadike-Danes, p.235; Centre for Management Development, UWI (Barbados).

⁹² Van Hove, K and Solignac Lecompte, H-B; 1999; “Aid for trade development: Lessons for Lomé V”; (*ECDPM Discussion Paper 10*), Maastricht: ECDPM.

⁹³ However, ownership is not necessarily a straightforward concept as there may be significant difference between that exercised by the ACP State and that which should reside in the ultimate beneficiary. See: Van Hove, K and Solignac Lecompte, H-B; 1999; “Aid for trade development: Lessons for Lomé V”; (*ECDPM Discussion Paper 10*), Maastricht: ECDPM.

very process of identifying, designing and appraising policies, programmes and projects has been described as one of the most important capacity building tools.⁹⁴

This would imply that the EC would have to 'step back' somewhat from the decision making process and allow the ACP States to assume those responsibilities, whilst providing the technical support and capacity building that will be required. It is likely to prove a difficult and sensitive business, the more so as some of those who have been brought up under the previous tradition and will be required to adapt, may find it all too much of a 'culture shock'. An example is the assessment of needs that the EC apparently wishes to conduct in ACP States and organizations to avoid channelling assistance to where the absorptive capacity is inadequate. A sensible enough idea but if mishandled it may undermine the very capacities that are to be fostered. Whatever the initial difficulties, if the capacity building approach is to penetrate into policy making, which it will need to if things are really to change, the EC will have to learn to work in partnership with the ACP States and other non-government actors and, reach agreement on how best they can assist them in formulating and implementing their development strategies. So it is likely that the EC will have to adopt a less rigidly bureaucratic approach and be more flexible in what may well prove to be a lengthy, iterative process.

Furthermore, although the new approach may ultimately make a deeper and more sustained contribution to poverty eradication and general development, it is 'no quick fix'. All the research carried out so far suggests that if capacity building is seriously intended then donors need to be prepared to make long-term commitments. Illustrative of the findings of such research is: *'Capacity building is more successful and more sustainable when it responds to an internal initiative and when it is supported through a process approach ... In general it means avoiding single one-time events and one-off contacts. Instead, it means building relationships and taking time to develop both local ownership and trust among the partners. Most important, it means adjusting timetables, priorities and expectations to the capabilities of local actors and their local situation'*.⁹⁵ Now the EC has certainly made a long-term commitment for the life of the Partnership Agreement and it has in place its antennae – local delegations. Nonetheless it will be necessary for the EC to view the capacity building programmes themselves as long term and that may be difficult where there is amongst officials an entrenched culture of meeting internal administrative procedures and targets.

Finally, and very importantly, the need for capacity building is unlikely to be confined to the ACP States alone. The capacity building measures in the Partnership Agreement are likely to require a far greater commitment of human resources on the part of the EC and greater efficiency than previously. Such a commitment needs to extend beyond the Commission itself and into the field. The Commission's own statement refers to 'human resources being too thin on the ground' and the need to 'streamline fragmented procedures and institutional mechanisms'.⁹⁶ It would be only natural for the ACP States to want some assurances from the EC that it is in a position to deliver on the capacity building measures and the new approach to development cooperation, all the more so since the EC is currently involved in a complex reform of the Commission as well as its entire delivery of external assistance.

Capacity Building in the Partnership Agreement

The first point to note is that the Partnership Agreement is actually silent on how it might all work. In fact, although many of the issues relating to the implications of capacity building that have been discussed here are recognized in the Commission's own paper, nonetheless the Partnership Agreement still manages to be remarkably opaque on the question of capacity building. The language of the Agreement is long on aspirations and intentions and relatively short on method and implementation. Is

⁹⁴ See for example Schacter, M "Capacity Building: A New Way of Doing Business for Development Assistance Organisations", Policy Brief No.6; January 2000; *Institute on Governance*, Ottawa, Canada.

⁹⁵ Ballantyne P, Labelle R, and Rudgard S; 2000; "Information and Knowledge Management: Challenges for Capacity Builders; (*Policy Management Brief No. 11*); Maastricht: ECDPM.

⁹⁶ Commission, "Communication from the Commission to the Council and the European Parliament: The European Community's Development Policy", 26 April 2000, COM(2000) 212 final.

not surprising that the Commission's paper on the EC's development policy failed to provide any clear direction on the new development model – a fact pointedly criticized at a recent Roundtable meeting of European NGOs (non-governmental organizations) and members of the European Parliament.⁹⁷

The entire Partnership Agreement is replete with references to capacity building. Some of them relate to instances where the ACP States are likely to require some capacity building if they are to be able to comply with the terms of the Partnership Agreement or if they are to fully benefit from the opportunities it presents. Other references concern the areas where the EC has agreed to assist the ACP States in developing their capacity. It might seem sensible that the requirements and offers of assistance should match but the text is not always designed in that way. The basis for the required assistance is largely described in Article 33, which sets out the overall capacity building objectives, and in Article 34, which provides the objectives for economic and trade co-operation. The examples provided throughout the Title II on Economic and Trade Cooperation and in Part 4 on Development Finance Cooperation need to be considered to see what assistance might actually be provided.

An example of a provision where both the possible need and the available means of meeting it are brought together is Article 46 on protection of intellectual property rights. The first paragraph under that article refers to ensuring, “*an adequate and effective level of protection of intellectual, industrial and commercial property rights, and other rights covered by TRIPS ...*”. Then paragraph 6 sets out the available capacity building assistance, “*the preparation of laws and regulations for the protection and enforcement of intellectual property rights, the prevention of the abuse of such rights by rightholders and the infringement of such rights by competitors, the establishment and reinforcement of domestic and regional offices and other agencies including support for regional intellectual property organizations involved in enforcement and protection, including personnel*”. It might be inferred from the assistance to be provided to the ACP States that intellectual property is an area of considerable importance to the EC.

The most extensive treatment of capacity building measures is in Article 33 on institutional development and capacity building, which is discussed in detail later on.

Some consideration should also be given to the question of funding. The language used in respect of capacity building is very broad to render the widest possible scope of activity eligible. The actual funding arrangements may provide a better indication of what is likely to be feasible in practice. The provisions on financial cooperation are to be found in Part 4: Development Finance Cooperation. The provisions reiterate Article 33 in terms of scope and set out the type of financing that is available and certain specific programmes to be funded but the actual money to be made available – EUR 15.2 billion of which up to EUR 13.5 billion⁹⁸ is to come from the 9th EDF – is set out in the annexes to the Partnership Agreement, together with the detailed terms and conditions of financing.

A detailed analysis of the Annex I, the Financial Protocol and its implications for capacity building measures, is beyond the scope of this chapter. However, it should be noted that with the exception of grant funded support for “*capacity building to strengthen and facilitate the effective participation of the private sector in social and economic development*”,⁹⁹ there is no particular ‘line item’ for capacity building nor are there any specific funds ear-marked for it. Capacity building measures will therefore ‘compete’ for grant funds along with other projects and programmes under the National Indicative Programmes and the Regional Indicative Programmes (NIPs and RIPs). Therefore, the ACP States will need to determine (at both the national and regional levels) the division that they wish to make between

⁹⁷ “Review of New EC Development Policy Statement”, Proceedings of a Roundtable Meeting on 3 May 2000, chaired by Glenys Kinnock MEP.

⁹⁸ EUR 10,000 million of this is in the form of grants is to be reserved for support for long-term development, in particular, financing national indicative programmes. However, some part of those monies is ear-marked – (1) EUR 90 million and EUR 70 million respectively for the budgets of the ...-based Centre for the Development of Enterprise and the Centre for the Development of Agriculture; and (2) EUR 4 million for the Joint Parliamentary Assembly. There is also further ear-marking of the 9th EDF – (1) EUR 1,300 million in grants for financing regional cooperation and integration; and (2) EUR 2,200 million to finance the ‘Investment Facility’.

⁹⁹ Article 7 on special operations, Annex I – Financial Protocol.

capacity building and other programmable activities. Moreover, even within the context of capacity building itself, there will be important choices between the longer term building of human capacity through, say strengthening research, and the more immediate requirements of capacity building for the preparation and conduct of negotiations.

Analysis of the Capacity Building Provisions

Turning now to the actual measures themselves, an obvious starting point is Article 33 on institutional development and capacity building. Paragraph 1 of the article stipulates that co-operation “shall support” the efforts of the ACP States to develop and strengthen structures, institutions and procedures that help to:

- “(a) promote and sustain democracy, human dignity, social justice and pluralism, with full respect for diversity within and among societies;
- (b) promotes and sustain universal and full respect for and observance and protection of all human rights and fundamental freedoms;
- (c) develop and strengthen the rule of law; and improve access to justice, while guaranteeing the professionalism and interdependence of the judicial systems; and
- (d) ensure transparent and accountable governance and administration in all public institutions.”

Leaving aside the degree of overlap between the sub-paragraphs (most obviously between (a) and (b)), those apparently mandatory provisions are considered sufficiently meritorious to be worthy of ‘support’ without any explicit connexion being made to development. This reflects the overt political ideology that characterizes parts of the Partnership Agreement. The connexion with development comes later in paragraphs 3 and 4.

Paragraph 3 provides for support for the ACP States’ efforts to develop their public institutions into “a positive force for growth and development and to achieve major improvements in the efficiency of government services”. In the context of such development-led improvements, the paragraph goes on to single out particular objectives for ‘cooperation support’:

- “(a) the reform and modernization of the civil service;
- (b) legal and judicial reforms and modernizing of justice systems;
- (c) improvement and strengthening of public finance management;
- (d) accelerating reforms of the banking and financial sector;
- (e) improvement of the management of public assets and reform of public procurement procedures; and
- (f) political, administrative, economic and financial decentralization”

Again there is a degree of overlap within the paragraph (for example between (c) and (d)) and with paragraph 1, most obviously in terms of the legal and judicial reforms.

Paragraph 4, which deals with the ‘market economy’, is framed slightly differently from paragraph 3 referred to above. There is no reference to ‘support for the efforts of the ACP States’. Rather the target of the cooperation is to assist in restoring/enhancing “critical public sector capacity and to support institutions needed to underpin a market economy”. One reason for doing so is likely to be the fact that

'non-state actors' are also targeted by this provision. In any event the paragraph goes on to identify specific objectives for cooperation:

- “(a) developing legal and regulatory capabilities needed to cope with the operation of a market economy, including competition policy and consumer policy;
- (b) improving capacity to analyse, plan, formulate and implement policies, in particular in the economic, social, environmental, research, science and technology and innovation fields;
- (c) modernizing, strengthening and reforming financial and monetary institutions and improving procedures;
- (d) building the capacity at the local and municipal levels which is required to implement decentralization policy and to increase the participation of the population in the development process; and
- (e) developing capacity in other critical areas such as: (i) international negotiations; and (ii) management and coordination of external aid”

Once again there is a degree of overlap within paragraph 4 (between (b) and (c)) and with paragraph 3, most obviously in terms of the legal reforms and monetary institutions.

Quite apart from anything else that Article 33 may provide for 'institutional strengthening', sub-paragraph (e) makes it quite clear that there is to be specific 'capacity building support' for the numerous international negotiations in which ACP States are or may become involved. The provision also leaves open the prospect of the ACP States using EC resources to build their capacity to prepare for the negotiations with the EC in September 2002 for the new trading arrangements, provided the Partnership Agreement can be ratified in time.¹⁰⁰

By the same reasoning, sub-paragraph (e) should also be available to develop the capacity of the ACP States to prepare for the other negotiations with the EC that are envisaged in the Partnership Agreement. In addition to the September 2002 negotiations for new trading arrangements to replace the present Lomé-style provisions, the Partnership Agreement also provides for the possibility of other trade-related agreements between the ACP States and the EC. Article 41, on general provisions on trade in services, provides a link with the WTO as it raises the possibility of negotiations under article XIX of GATS (General Agreement on Trade in Services) on ACP States' priorities with a view to them achieving an improvement in the EC Schedule. Article 46, on the protection of intellectual property rights refers to the possible conclusion of agreements aimed at protecting trademarks and geographical indications for certain products. Article 47, on standardization and certification, refers to consideration being given to negotiating mutual recognition agreements. Finally Article 53, on fishery agreements, declares the willingness of both the ACP States and the EC to negotiate fishery agreements aimed at guaranteeing sustainable and 'mutually satisfactory' conditions for fishing activities in the ACP States.

There are two other paragraphs in article 33 to be mentioned. Paragraph 2 states simply that, "*The Parties shall work together in the fight against bribery and corruption in all their societies.*" Mismanagement of development assistance is a concern for both the ACP States and the EC, although it has tended to be presented – a catalogue of project design failures notwithstanding – as an ACP problem. This provision recognizes the fact that errors and failures are not the preserve of the ACP States. Then paragraph 5 operates as a 'catch all provision' to ensure that any legitimate objective for which a party might require capacity building is covered, by stipulating that cooperation: "*shall span all areas and sectors of co-operation to foster the emergence of non-state actors and the development of*

¹⁰⁰ See Article 93 on ratification and entry into force, which provides that the Partnership Agreement, "*shall enter into force on the first day of the second month following the date of deposit of the instruments of ratification of the Member States and of at least two-thirds of the ACP States...*".

their capacities; and to strengthen structures for information, dialogue and consultation between them and the national authorities, including at regional level'.

The capacity building objectives set out under Article 33 are then reiterated and or reflected in a number of the articles under Title II of the Partnership Agreement entitled, 'Economic and Trade Cooperation':

- Article 34, which deals with the objectives and principles of economic and trade cooperation, provides in paragraph 2 that "*particular regard shall be had to the need for the ACP States to participate actively in multilateral trade negotiations*". Whilst, more substantively, paragraph 3 provides "*economic and trade cooperation shall aim at enhancing the production, supply and trading capacity of the ACP countries as well as their capacity to attract investment ... strengthening the ACP countries' trade and investment policies and at improving the ACP countries' capacity to handle all issues related to trade*" (emphasis added).
- Article 37, dealing with procedures for the conclusion of the new trading arrangements, states that the preparatory period,¹⁰¹ "*shall also be used for capacity-building in the public and private sectors of ACP countries, including measures to enhance competitiveness, for strengthening of regional organizations and for support to regional trade integration initiatives, where appropriate with assistance to budgetary adjustment and fiscal reform, as well as for infrastructure upgrading and development, and for investment promotion*" (emphasis added). For those ACP States that are going to opt for some sort of regional trade agreement with the EC, with or without the economic partnership agreements presently on offer, then this provides a valuable opportunity to 'gear up' their regional organizations for the role they will undoubtedly have in implementing it.
- Under Article 39, dealing with general provisions for cooperation in the international fora, the EC agrees to "*assist the ACP States in their efforts ... to become active members of these organisations [WTO and other international organizations], by developing the necessary capacity to negotiate, participate effectively, monitor and implement these agreements*" (emphasis and parenthesis added).
- Under Article 41, dealing with general provisions on trade in services, the EC undertakes to "*support the ACP States' efforts to strengthen their capacity in the supply of services. Particular attention shall be paid to services related to labour, business, distribution, finance, tourism, culture and construction and related engineering services with a view to enhancing their competitiveness and thereby increasing the value and the volume of their trade in goods and services*" (emphasis added).
- Under Article 44, dealing with general provisions on trade-related areas, the EC undertakes to "*support the ACP States' efforts ... to strengthen their capacity to handle all areas related to trade, including, where necessary, improving and supporting the institutional framework*" (emphasis added). As if to underscore the point made in that general statement of commitment, the other articles in the same chapter go on nonetheless to refer to capacity building in respect of their specific trade-related areas. This is particularly the case with Article 47 on standardization and certification, Article 48 on sanitary and phytosanitary measures, and Article 51 on consumer policy and protection of consumer health.

Insights into what 'action' is actually envisaged as capacity building can be found in Article 45 on competition policy, Article 46 on protection of intellectual property rights, Article 50 on trade and labour standards and Article 51 on consumer policy and protection of consumer health. Mostly the action described is the drafting of legal frameworks and the preparation of laws and regulations. But, Article 51 also refers to 'exchanging information and experiences, improving the information provided

¹⁰¹ Defined in Article 37(1) as the period from September 2002, when negotiations are to start, to 31 December 2007, by which time they are to be concluded in time for their entry into force on 1 January 2008.

by ACP States' institutions, encouraging the development of associations and improving communication with enforcement bodies'.

The activities proposed for the Centre for the Development of Enterprise ("the CDE")¹⁰² and Technical Centre for Agriculture and Rural Cooperation ("the CTA") give more action-specific details. Annex III to the Partnership Agreement sets out those activities. These are of course instances of non-programmable aid. As regards the CDE, Article 2 provides that, "*The CDE shall support the implementation of private-sector development strategies in the ACP countries ... [and] assist private ACP enterprises to become more competitive ... [and to that end shall] assist with the development of business support services through support for capacity building in private sector owned organizations or support for providers of technical, professional, management, commercial and training support services*" (parenthesis and emphasis added).

The CTA is itself a capacity building body, with its mission defined in Article 3 as, "strengthening policy and institutional capacity development and information and communication capacities of ACP agricultural and rural development organizations". Arguably all of its activities are directed towards and available for capacity building. Mostly those activities appear to be 'developing and providing information services and ensuring better access for ACP organizations to research, training and innovations, together with sharing capacity development programmes with them and supporting decentralised regional information networks'.

B. Strategies for Taking Advantage of the Partnership Agreement in Building Effective Capacity for Trade Negotiations and for Production and Trade

Preparing for Capacity Building

The inescapable conclusion from the assessment of what capacity building means, and what is being done in the field, is that capacity building as an effective tool for economic development is 'rocket science'. It is far more complex in almost every respect than the more traditional project and programme oriented donor assistance. This is so for all the stages from the initial analysis of needs through the subsequent stages of designing a particular intervention to fit productively into the existing environment; implementing and monitoring progress; developing smooth exit strategies; and evaluating the impact so as to improve future interventions.

It is rightly complicated for at the heart of capacity building is people – networking, learning, organising, managing, producing and, hopefully, delivering. The object of capacity building is to enter onto that 'landscape' and improve it – whether by improving information, skills, systems, incentives, controls, enforcement or simply the access to any of those things. That would be quite hard enough. However, the ultimate objective of the ACP States and the EC is something much more sophisticated, namely to use that intervention as a means to achieve more effective social and economic development. By comparison projects for physical construction, no matter how large, are likely to appear quite straightforward.

It will readily be appreciated that the ACP States and the EC may need to develop new skills and procedures in order to make effective use of the capacity building opportunities provided by the Partnership Agreement. It may therefore be necessary to build some capacities before much advantage can be taken of the capacity building measures. Something of that is recognized in the Partnership Agreement itself, which refers rather obliquely in Article 1 of Annex III to the need to 'strengthen' the role of both the CDE and the CTA. At first it may appear that those institutions are simply going to be

¹⁰² Its predecessor was the Centre for Industrial Development, which was a creation of the Lomé Convention and an institution criticized for its lack of effectiveness. The change to the Centre for the Development of Enterprise, which should operate as a prime instrument of private sector development, was part of the negotiating mandate of the ACP States.

given an enhanced role under the Partnership Agreement. However, reading between the lines would suggest that such strengthening is likely to involve a fortifying of their own capacities in order to take on the role being assigned to them.

A degree of capacity building may be required by the ACP States before they can really begin to derive benefit from the capacity building provisions in the Partnership Agreement. The initial task of assessing their needs and auditing their resources will be by no means straightforward. Assessments will need to be made about the levels at which capacity building interventions should be targeted, which will depend upon objectives and expectations; for example, altering education policy as a whole or, strengthening particular research institutions which are already producing some good results. Those issues are partly technical but very importantly they can also be highly political and they will not be easy to make. Also those interventions will need to be brought within the NIPs and RIPs, because it seems that in large part capacity building programmes will be funded from programmable aid. Thus, an early task for the ACP States will be to determine the allocation of such resources between more traditional projects and capacity building programmes and, even within the latter, the choice between immediate negotiating needs and other capacity building requirements. It will be appreciated that these 'other capacity building requirements' include addressing the very supply side constraints to present trade development that have largely prompted the focus on capacity building. This task alone requires some capacity building assistance as it may not be straightforward to achieve an appropriate mix so that capacity building enhances the returns from, or the sustainability of, the 'traditional project'.

The ACP States will also have to develop on-going monitoring capacities so that the capacity building programme can be adapted to suit changes in circumstances and so remain relevant. In addition, they will need to develop evaluation techniques so as to assess the relative contributions of the projects and programmes to their overall development strategies.

Furthermore, given the intention that non-government actors should be involved in the identification of capacity needs and the development of capacity building programmes to meet those needs, some ACP States may have to engage in preliminary capacity building to open up or improve lines of communication between the public and private sectors and with civil society.

Preparation for international negotiations brings with it extra challenges. Where all or nearly all of the ACP States are involved with the WTO and the EC, some work will need to be done on how to finance such pan-ACP 'projects' and avoid free-rider problems, when the main funding mechanisms available are the NIPs and RIPs.¹⁰³ Furthermore, some initial restructuring of Ministries of Trade and Industry and or Foreign Affairs may be required to support the negotiating efforts, and agreement reached on which staff are to be trained and provided as part of the regional or group negotiating effort. It may be that a degree of capacity building will be required by some ACP States to assist in formulating their positions on those issues. Certainly, the restructuring of Ministries may well call for such assistance, particularly with changing the balance between permanent and temporary staff, outsourcing for specialist expertise and, improving communications across Ministries and Departments.

Finally, the ACP States will have to address the question of skills haemorrhage, or brain drain, for otherwise people who have had their 'capacities developed' may be lost to the particular task concerned, the organization or even the country.

It is unlikely that all of the preparatory work described above could be achieved by the ACP States without the benefit some external funding and or donor-led technical assistance. However, some of it

¹⁰³ There have been 'all ACP' programmes financed by the EDF. For example the EC approved such funding for the ACP-EU Trade Development Programme (TDP) at the end of 1994 and allocated ecus 7.2 million for two years together with technical resources. Other pan-ACP programmes under the previous Lomé regime include: Europe-ACP Liaison Committee for the Promotion of Tropical Fruits, Off-season Vegetables, Flowers, Ornamental Plants and Spices (COLEACP); Association des Produits à Marché (APROMA); and the Forum of the European Trade Promotion Organizations. Unfortunately none of them seems to have had more than a very limited degree of success.

may be really need to be in place before the funds for capacity building under the Partnership are available. There may need to be some 'capacity building for the capacity building' even before Agreement resources can be accessed.

Immediate Requirements for Capacity Building

The ACP States are currently facing heavy drains on their resources. At the same time as they are trying to maximise the benefit from their present trading arrangements with the EC (the negotiation of which took up considerable time and resources) whilst maintaining the momentum of their own regional integration efforts, they also face a series of crucial trade negotiations.

For a start, there are the WTO negotiations in the notoriously difficult areas of services and agriculture, as part of the 'built-in agenda'. There are also many outstanding issues in respect of the implementation of obligations, expiry of transitional periods, package of confidence measures for LDCs and transparency in decision-making.¹⁰⁴ Following the break up in disarray of the Seattle Third WTO Ministerial Conference in 1999, it seems that there is now a serious attempt by Italy (who will assume the G7 presidency in 2001) and South Africa to launch a global trade round.¹⁰⁵ This is at an early stage and so its chances of success uncertain, but even the process of eliciting the level of support necessary to justify serious planning for such a round of talks could well place a strain on technical and administrative resources.

In addition, the ACP States have notification commitments under the Marrakesh Agreement of 1994 for a formidably long list of WTO agreements¹⁰⁶ - of which agriculture, import licensing, quantitative restrictions, subsidies and countervailing measures, together with Articles VII and XVII of the GATT 1994, are causing particular difficulty. Estimates of non-notification amongst ACP States run as high as 75 per cent.¹⁰⁷ Notification has both administrative and legislative implications and yet half way through the 10-year period that was afforded for the completion of the exercise (by 2005), there are still ACP States who have not been able to fully address those implications, let alone put in place the required legislation.

Furthermore, almost all the ACP States are involved in other trade and or regional integration negotiations. In Africa, the African Economic Community Treaty of 1994 committed its members to progress through a series of phases towards the establishment of the African Economic Community, the 'second phase' (1999-2007) of which requires them to 'stabilize tariff barriers and non-tariff barriers, customs duties and internal taxes and to pursue a programme of gradual harmonization and integration of national policies'.¹⁰⁸ As part of that whole process the African ACP States are also engaged in the development of free trade areas and customs unions at regional economic community level. By way of example, the Common Market for Eastern and Southern Africa (COMESA), which achieved a free trade area last October, plans full economic integration, including the free movement of skilled labour by 2004.¹⁰⁹

Then there are the extremely pressing trade negotiations with the EC that are due to start in September 2002. The Partnership Agreement followed nearly one and a half years of negotiations, but even so, the terms of trade cooperation could not be concluded and instead both sides agreed on a

¹⁰⁴ For a review of concerns and proposal by developing countries see UNCTAD "Positive Agenda and Future Trade Negotiations", Geneva, 2000.

¹⁰⁵ See the Financial Times, 3 November 2000.

¹⁰⁶ See the list on pages 1 and 2 in Gonzales A, 'Proposals for an ACP Agenda of Capacity Building, Dialogue and Information for International Trade Negotiations', *ECDPM*, September 2000.

¹⁰⁷ Gonzales A, 'Proposals for an ACP Agenda of Capacity Building, Dialogue and Information for International Trade Negotiations', *ECDPM*, September 2000.

¹⁰⁸ African countries are also in negotiation with the United States over the Africa component of the United States Trade and Development Act of 2000.

¹⁰⁹ The Financial Times of 31 October 2000 provides an interesting commentary on the plans, which also includes the free movement of people by 2014 and currency union by 2025, together with the likely difficulties and consequences of its implementation.

timetable for the negotiations. That timetable is set out in Article 37 of the Partnership Agreement itself and it is easy to envisage that the ACP States will be occupied in negotiations for at least five years and perhaps more, depending on the nature of the agreements concluded.

In addition to the burden of preparing for and engaging successfully in all those negotiations, the ACP States will also need to ensure that they can maximise the benefit from the provisions on trade by identifying and addressing the constraints to improved export performance. Some of those constraints have already been mentioned. However, quite apart from the more frequently discussed physical infrastructure ‘supply side’ constraints, there are also constraints imposed by the sheer lack of technical, administrative and institutional capacity to engage in the necessary policy, regulatory and procedural changes. For example, the volume and efficiency of exports may be being detrimentally affected by a host of institutional matters: poor customs procedures; badly structured freight charges; cumbersome regulations; lack of access to information on labelling requirements and standards; poor maintenance programmes for the physical transport infrastructure; and lack of good feedback on market requirements. In addition, there may be constraints to diversification at the policy and regulatory levels, with: lack of risk capital; out-dated corporate and business laws; short-sighted bank lending policies; slow and cumbersome legal systems; poor communication between the public and private sectors; and poor climates for foreign investments. Furthermore, there are the constraints posed by the lack of appropriate human resources, which involves: lack of trained public and private sector personnel, in particular in trade negotiations; poorly designed career paths and inadequate incentives; and imbalance of trained personnel between public and private sectors.

In reality many ACP States could really benefit now from immediate access to the capacity building measures in the Partnership Agreement. Even then, and because of the programmable aid process, it might take some time for funds to be disbursed and technical assistance made available for capacity building. In the special circumstances of the September 2002 negotiations, the ACP States would be well advised to consider an early approach to the EC for a ‘fast track’ mechanism to unlock funds or other resources for capacity building.

Forthcoming Trade Negotiations with the EC

Article 37 of the Partnership Agreement includes a number of different areas for negotiation and or implementation: (1) economic partnership agreements or alternative arrangements with the non-least developed ACP States; (2) special treatment for least-developed countries (LDCs); and (3) terms of entry of ACP goods into the EC market. Each of these has its own timetable – the period of negotiations is to span five years from September 2002 to 31 December 2007 – and presents its own capacity building challenges for the ACP States.

Article 37(1) starts with an imperative: *“Economic partnership agreements shall be negotiated during the preparatory period which shall end by 31 December 2007 at the latest ... and the new trading arrangements shall enter into force by 1 January 2008 .”* Despite the tone of the provision, the ACP States have managed to preserve a choice for themselves but one that will nonetheless require detailed examination at national, regional and intra-ACP State levels if it is to be meaningfully exercised.

The position of the 39 least developed ACP States¹¹⁰ seems to be the most straightforward. They are to have duty free entry into the EC market for *“essentially all”* of their products by *“at the latest 2005”*. This duty free entry is not on a reciprocal basis and so their terms of trade with the EC will continue essentially as they were under the Lomé Conventions, save the possibility that even better terms might be provided. The improvement may result because the EC has also committed itself under this paragraph to, *“simplify and review the rules of origin, including cumulation provisions”*. The process of liberalization is to start this year.

¹¹⁰ See the list provided in Appendix I(i).

Notwithstanding the apparent ‘security’ of their position, the least developed ACP States should nonetheless seek to negotiate with the EC on two main issues. The first is the list of their products that are to benefit from duty free entry. It is a truism but worth repeating, that duty free entry is only as good as the products that are eligible. The experience of the Republic of South Africa in negotiating the entry of its products with the EC should very much be borne in mind. The second issue is the actual rules of origin to be applied, particularly as regards ‘cumulation’ that allow value added to be gained from a number of different ACP States.

The other 37 non-least developed ACP States (not including South Africa which has a free trade agreement with the EU) have some hard choices to make. It is clear from paragraph 1 of Article 37 that one option, and the one that has been preferred by the EC throughout, is the conclusion of ‘economic partnership agreements’. Although these are not expressly termed ‘regional free trade agreements’, that would seem to be what the EC still has in mind. Article 35(2) of the Participation Agreement refers to ‘economic and trade cooperation between the parties building on regional integration initiatives of ACP States’. Article 37(7) of the Participation Agreement refers to ‘the progressive removal of barriers between the parties to the economic partnership agreements’.

Therefore, the ACP States need to consider whether they wish to conclude free trade agreements with the EC on a regional basis (or bilaterally as is also possible).¹¹¹ In order to make that initial decision the ACP States will have to explore what such regional agreements might mean. It is not a decision to be made on the basis of principle but after detailed research and a careful balancing of benefit and cost.

The first issue is to identify the regions. Given the programme of regional integration on which most ACP States have already embarked and, the reference throughout the Partnership Agreement to support those efforts, there would seem to be little point in departing from existing groupings. That is where the problems start. Many of those regional organizations involve both least developed ACP States, non-least developed ACP States and in some cases non-ACP States, and yet the Partnership Agreement makes it clear that *“Economic and trade cooperation shall take account of the different needs and levels of development of the ACP countries and region. In this context, the Parties reaffirm their attachment to ensuring special and differential treatment for all ACP countries and to maintaining special treatment for ACP LDCs and to taking due account of the vulnerability of the small, landlocked and island countries”* (emphasis added).¹¹² The ACP States will require an assessment of whether, and if so how, all those competing commitments could be met without compromising the integrity and development of their regional organizations.

In addition to the question of ‘membership’ and as part of addressing the issues it raises, detailed work would need to be done on rules of origin, including cumulation, and on the list of products to be subject to the terms of the ‘economic partnership agreement’. The ACP States will need a proper appreciation of how the arrangements might work in practice so that they can assess their impact. In working on their proposals, the ACP States would need to bear in mind their existing trade agreements (and those under negotiation) with other countries for which the grant of ‘most favoured nation’ status may be an issue. This process is likely to involve intense negotiations between individual ACP States and their organizations as the impact could depend on what their neighbouring ACP States and organizations do.

Another significant factor is the length of time that the ACP States would have under an economic partnership agreement before having to ‘remove their barriers to trade’. Although the Partnership Agreement provides that the negotiation of any economic partnership agreements should be concluded by 31 December 2007 it is silent on the duration of such a ‘transitional period’, a concession on the EC’s original negotiating position of free trade areas to be established within 10 years. The Partnership Agreement now simply refers to *“establishing the timetable for the progressive removal of barriers to*

¹¹¹ Perhaps structured along the lines of the Republic of South Africa – EU Agreement.

¹¹² Article 35(3).

*trade between the parties, in accordance with the relevant WTO rules ... 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 adjust their economies to the liberalization process. Negotiations will therefore be as flexible as possible in establishing the duration of a sufficient transitional period ...*¹¹³ (emphasis added).

The reference to WTO rules is key, as everyone is now committed to doing things by the ‘WTO book’. In that regard Article XXIV of the GATT provides that an FTA should be completed “*within a reasonable period of time*”, which has been defined as a period that “*should exceed ten years only in exceptional cases*”.¹¹⁴ The case for ‘exceptional circumstances’ could be based on the ACP States’: (1) levels of economic development; (2) the mixed levels of development amongst the contracting parties – least developed and developing ACP States and the industrialized members of the EU; and (3) the extent of the work to be done in developing their own regional organizations. The ACP States should prepare the case for a transitional period in excess of 10 years and seek a commitment from the EU that it would support them in obtaining the WTO approval that would be required in due course.¹¹⁵

The ACP States should also negotiate on the precise extent of the ‘removal of barriers to trade’ to which they would be committed under an FTA with the EC. Under Article XXIV.8(b) an FTA involves duties and other regulations of commerce being “*eliminated on substantially all the trade between the constituent territories in products originating in such territories*” (emphasis added). The term ‘substantially all the trade’ has never been defined in GATT but it has been argued that it implies between 80 and 90 per cent.¹¹⁶ In order to maximise the benefits of an FTA with the EC, the ACP States will have to prepare and negotiate hard on a list of EC products to be excluded, so as to prevent ACP products facing competition in their domestic markets from them, particularly those that benefit from extensive subsidies.

The ACP States may also wish to press for more extensive access to the EC market for their own products, whether by way of easing restrictions on ‘sensitive products’ or by way of eliminating non-tariff barriers. The former may be difficult to achieve¹¹⁷ but, a detailed case on specific protectionist measures currently affecting ACP products may force some concessions. For example, a recent study by the World Bank¹¹⁸ examines the effects of health standards on trade, in particular the EC’s use of the ‘precautionary principle’, whereby restrictions on food imports are justified while research is ongoing and before the risks to health are known. It cites the EC’s attempt to impose a tighter aflatoxin standard than that recommended by Codex or by the WHO and calculates that the difference in standards could save 2 lives for every billion (with the population of the EC being only about 380 million). However, that difference in standards alone could reduce exports of cereals, dried fruit and nuts from African countries¹¹⁹ by about 64 per cent or \$700 million.

¹¹³ Article 37(7). Those provisions are very similar to the EC’s negotiation position for the agreement with the Republic of South Africa, which was that the opening up of the South African market should be at a pace that recognized “*the country’s specific socio-economic situation, and leaving sufficient space to protect the most vulnerable industries and agricultural sectors in South Africa and its neighbouring countries*”; Pinheiro, Keynote Address, in Maastricht on 17 April 1997.

¹¹⁴ WTO 1995:32.

¹¹⁵ The present request for a WTO waiver refers only to the ‘preparatory period’, which is the period *before* the conclusion of the new trade arrangement by 31 December 2007 and for which all ACP States (irrespective of their level of development) are to continue to enjoy ‘Lomé preferential treatment’.

¹¹⁶ See, for example, the study carried out by McQueen for the EU; McQueen, M. 1999. “The Impact Studies on the Effect of REPAs between the ACP and the EU”, (*ECDPM Discussion Paper 3*). Maastricht: ECDPM.

¹¹⁷ See the comments in Solignac Lecomte, H-B, 1998. “Options for Future ACP-EU Trade Relations”, (*ECDPM Working Paper 60*), Maastricht; ECDPM.

¹¹⁸ Otusuki T, Wilson J and Sewadeh M, “Saving two in a billion: A case study to quantify the trade effect of European food safety standards on African exports”, *World Bank*.

¹¹⁹ Chad, Egypt, Gambia, Mali, Nigeria, Senegal, South Africa, Sudan and Zimbabwe.

The Partnership Agreement provides in Article 37(6) that *“In 2004, the Community will assess the situation of the non-LDC which ... decide that they are not in a position to enter into economic partnership agreements and will examine all alternative possibilities, in order to provide those countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules”*. That provision replicates almost word for word the EC’s negotiating mandate, and yet two years on little more is known about what the EC considers as such ‘alternative possibilities’ might include. The ACP States cannot really undertake a proper assessment without knowing the alternatives. Realistically the process of investigation cannot be conducted in the linear way implied by the Partnership Agreement. Work across all feasible options would have to be undertaken simultaneously and at a pace that would allow the ACP States to know by 2004 whether or not they wish to enter into economic partnership agreements with the EU leading to FTAs. If it became apparent that such agreements were not to be concluded, then that work would also need include proposals for an alternative arrangement that would protect their interests so far as possible while also being WTO compatible in time for the start of talks in 2004.

So far, the only alternative to free trade areas that has been discussed by the EC is some variety of enhanced GSP.¹²⁰ However, it is difficult to see how any WTO compatible ‘special and differential treatment’ can be afforded the ACP States as a class, given that they comprise least developed and non-least developed developing countries. The process of ‘assimilation’ has already begun with the EC’s decision in 1998 to give non-ACP least developed countries market access advantages equivalent to those under the Lomé Convention (Council Regulation (EC) No. 602/98 of 9 March 1998, OJ L 80 of 19.03.98) and is continued in Article 37 itself which distinguishes between least developed and non-least developed. The ACP States will need to examine trends in their trade positions with the EU against that of their non-ACP developing country competitors. Hopefully by 2002 (certainly by 2004) there will be proposals for future trade with and trade related assistance from the EU, that are WTO compatible and yet nonetheless maintain a worthwhile distinction between them and their non-ACP competitors. Fashioning such a strategy is likely to place a heavy burden of preparation on the ACP States.

The ACP States will need to apply considerable resources to prepare their positions for negotiating with the EC on the future trade arrangements and to embark upon and sustain the negotiating effort. During that time (in total some seven years or so) the ACP States will simultaneously have to be engaged in maximizing the benefits from the existing arrangements with the EC (if they are not to lose the benefits from their investment in the last set of negotiations). Even after the negotiations have been concluded and the parties move into the implementation and monitoring phase, there will be a continuing demand by ACP States for expertise to strengthen their efforts in addressing their own supply side constraints to trade expansion. Many of those supply side constraints derive from the lack of capacity in systems, networks, regulations and procedures. A useful summary is provided in, ‘Check-list for conducting trade-related technical cooperation needs assessment’, Report on High-level Meeting on Integrated Initiatives for Least-Developed Countries’ Trade Development’ (WTO document WT/LDC/HL/1/Rev.1, 23 October 1997).

C. Road Map for Capacity Building

A road map is really no more than a structure for planning a process of change – literally how to get from one situation to another. Using the UNDP’s notion of ‘zooming in’ and ‘zooming out’,¹²¹ (in other words it must be scalable) such a map should be capable of expanding to display an overall development strategy as well as representing the detail of a specific programme to be located within it.

It will be appreciated that in order to embark upon the exercise the overall objective will need to have been ascertained beforehand. There may be a number of sub-objectives built into the plan and a

¹²⁰ It will be noted that the EC is due to review its GSP in 2004.

¹²¹ UNDP, “Capacity Assessment and Development: In a Systems and Strategic Management Context”; Technical Advisory Paper No.3; Management Development and Governance Division, Bureau for Development Policy, January 1998.

degree of flexibility to accommodate the interaction between circumstances and resources and their impact on those original sub-objectives. The purpose of this road map is to draw together the elements of the discussion so far to show some of the steps that might be considered in the use of capacity building for the ACP States' forthcoming trade negotiations.

Assuming an overall ACP objective to improve the effectiveness of their negotiation and implementation of international agreements, then the following provides a possible road map¹²² for doing so:

Preparatory Work

Breaking down the objective

A first step will be to refine the objective, in terms of national, regional and pan-ACP State levels. Individual states and their regional groupings will have their own agendas for the use of capacity building measures within the overall objective of participating more effectively in negotiations and ensuring that they are better served by the implementation of the resulting agreements. These objectives should be located within ACP States' overall trade policies and national development plans.

Conducting a needs analysis

An early stage will be the identification of what capacity building is required and where, so that the effort is targeted where it is likely to be most effective. Again, although such an exercise is likely to start at individual ACP State level, it will also have to be conducted at a regional and perhaps sub-regional level. The ACP States developed negotiating bodies for the Partnership Agreement and for Seattle (for example the Caribbean Regional Negotiating Machinery (CRNM)), and some consideration might also need to be given to their capacity building needs if they are to take on a longer term negotiating role.

Identifying resources

An audit at the national and regional levels will be required to see where the resources are that could be re-deployed for negotiating purposes. Some consideration should be given to identifying resource capabilities in the private sector and how use may be made of them. It will be necessary to distinguish those resources that could only be provided for the relatively short term and those that could be made available for the 'long haul'. Obviously there will be some trade-offs to be made between the need for technical, legal and organizational expertise for the negotiations and the need for those skills in other areas.

It will also be necessary to identify and secure external assistance. A number of multilateral agencies, donor agencies and NGOs are already active in capacity building for the ACP States. An important task will be to take stock of those resources. For example, there is the assistance already being provided under the JITAP (by ITC, UNCTAD and WTO) addressing trade policy development and the IDB (Inter-American Development Bank) programme to provide the CRNM with expertise, research studies and training, together with other work being done by the Commonwealth Secretariat, CIDA, DFID and the EC.

The ACP States will need to coordinate these resources, seek others and try and harness them all for negotiating purposes. That is likely to be a delicate exercise, as not least those non-ACP actors are likely to have their own mandates and priorities. If the funds and assistance for capacity building under the Partnership Agreement are to be used, then the ACP States will need to bring the Agreement into force as speedily as possible and perhaps, try and agree some fast track mechanism with the EC for their immediate deployment.

¹²² There may well be over-lap between the actions to be carried out under the different timeframes of 'preparatory', 'immediate' and 'longer term' in that some action started in one phase may need to be continued on into another – most obviously, training.

Formulating an ACP strategy

The ACP States will also have to develop an ACP strategy for how they will approach and conduct international negotiations. That should cover resources, agenda, negotiation and also the strategic alliances likely to be required for WTO-related negotiations and action. The ACP States as a whole are a distinct entity for the purposes of negotiating with the EC but for the larger, WTO stage they may need to work out how they maintain the coherence of their ACP-EC position, whilst forming negotiating partnerships with others from time to time to achieve common goals. An exercise of that nature was conducted for Seattle and the ACP States will need to assess its effectiveness and determine where improvements can be made.

Modes of Immediate Intervention

Formulating negotiating proposals

In order to begin this process it may be necessary for ACP governments to establish a dialogue with non-government actors, particularly as the private sector will be expected to capitalize on the opportunities secured by the agreements/provisions negotiated. The process of formulating proposals, whether at the state, regional or pan-ACP level for international agreements could become an unwieldy process and hence the need to develop an ACP strategy.

As regards the actual content of the proposals some prior research and technical work would be required for the WTO negotiations on agriculture, services and other built-in agenda issues. There are also a series of issues in respect of non-tariff barriers, liberalization of financial services, TRIMs and TRIPS and their impact upon the ACP States, that require detailed consideration for positions to be properly developed, as well as the specific trade negotiations with the ACP States. The formulation of proposals for those negotiations will require significant technical work on the issues relating to the initial choice between economic partnership agreements and other possible models. Further work will then be required on the details of the terms for whichever model is to be pursued to ensure their WTO compatibility.

Training ACP personnel

Training is likely to be an on-going process. The immediate demands of the negotiations, together with the results of the earlier needs assessment and resources audit, are likely to determine the initial training to be undertaken. Such training may well be highly targeted and issue specific. Training on trade negotiations and on the identification of a positive trade agenda is critical. Legal expertise, particularly in drafting, is also likely to be required especially for the WTO negotiations and the development of the regional integration process. Local and regional training and research and academic institutions in ACP States, must be utilized and supported in the training events to build their capacity to provide such training on a sustained basis.

In providing training the ACP States will need to devise incentive packages and other ways of reducing the risk that the newly trained personnel will be promoted as a result, but to positions where their newly acquired specialist knowledge cannot be put into effective use for the ACP States.

Co-opting outside expertise

It is unlikely that adequate expertise can be produced to satisfy the immediate present demand by simply training ACP nationals. Outside expertise will need to be brought in. The exercise of coordinating external resources (including technical cooperation as discussed under the preparatory stage) should have identified from where such assistance might be best sought. Ideally the terms on which the experts would be brought in would require them to provide 'on the job training' as well, so that where possible their tasks can gradually be taken on by ACP personnel. Every effort should be made to facilitate that transfer of knowledge by workshops, seminars and other training events and, most importantly by the training of trainers.

Providing technical missions

Alongside the training programmes, it may be beneficial for ACP States to establish technical missions to support the negotiating effort and, later on for the implementation of the agreements and the day to day effort of 'easing the way' for exports of ACP products.

Re-designing Ministries

The Ministries of trade, industry and foreign affairs are likely to be at the forefront of the ACP States' negotiating effort. It may be necessary to carry out some re-design to sharpen their focus. In addition clear linkages may need to be developed between the various Ministries to ensure efficiency and the best use of trained personnel.

Opening up lines of communication

The need for clear lines of communication extends beyond the Ministries to the private sector and the other non-government actors. This should build upon the type of contact referred to earlier. It should for example enable the negotiators to be informed by the actual experiences of ACP exporters, so that they can better target their negotiations towards the removal of the constraints and the creation of opportunities. Such actors should take part in the negotiating teams of ACP States.

Modes of Longer Term Intervention

The road map becomes more difficult to specify in detail where the longer term is concerned because much will depend upon what has already been done, what success has been achieved, and what changes have taken place in the surrounding circumstances. However, some themes can be envisaged, notwithstanding the uncertainties:

- (a) raising the awareness of ACP citizens in general and the private sector in particular, on trade and international agreements by instituting a broad range of education and training programmes;
- (b) instituting on-going specialist trade-related training programmes for public sector officials, lawyers and other personnel in private sector organizations, combined with development or strengthening of national and regional training institutions;
- (c) improving the flow of, and access to, statistical and other trade-related information;
- (d) building research capacity on trade policy and trade agreements at universities, research centres and policy think tanks, whilst developing ways of linking that work to the needs of the public sector and business;
- (e) carrying out legislative and other regulatory reforms to improve the enabling environment for capacity building and to foster trade and investment;
- (f) pursuing public sector reform, whilst establishing and reinforcing links between the ACP national, regional and international institutions; and
- (g) reviewing, adapting and updating trade policy to become an effective instrument for promoting economic growth and alleviating poverty.

Finally, the ACP States will need to ensure the sustainability of the entire process. Some of the educational, legislative and institutional reforms discussed above are self-reinforcing and will help to ensure that the whole process is sustainable. However, the ACP States will need to try and maintain the processes and training established by securing long term funding.

REFERENCES

- Ballantyne P, Labelle R, and Rudgard S; 2000. "Information and Knowledge Management: Challenges for Capacity Builders"; (Policy Management Brief No. 11); Maastricht: ECDPM.
- CIDA, P.B. (1996). *Capacity Development: the Concept and its Implementation in the CIDA context*. Hull: CIDA.
- Commission (1996). 'Green Paper on relations between the European Union and the ACP countries on the eve of the 21st century: challenges and options for a new partnership'; COM(96) 570 final of 20 November.
- Commission Statement (2000). 'The new ECP-EU Agreement'.
- Commission (2000). "Communication from the Commission to the Council and the European Parliament: The European Community's Development Policy", 26 April 2000, COM(2000) 212 final.
- Gonzales A, 'Proposals for an ACP Agenda of Capacity Building, Dialogue and Information for International trade negotiations', ECDPM, September 2000.
- Lusthaus C., Adrien M-H, and Perstinger M, "Capacity Development: Definitions, Issues and Implications for Planning, Monitoring and Evaluation", Universalia, September 1999.
- McQueen, M. 1999. "The Impact Studies on the Effect of REPAs between the ACP and the EU", (*ECDPM Discussion Paper 3*). Maastricht: ECDPM.
- Otusuki T, Wilson J and Sewadeh M, "Saving two in a billion: A case study to quantify the trade effect of European food safety standards on African exports", World Bank.
- "Review of New EC Development Policy Statement", Proceedings of a Roundtable Meeting on 3 May 2000, chaired by Glenys Kinnock MEP.
- Schaumburg-Müller H, "Evaluating Capacity Building, Donor Support and Experiences", Report for the DAC Expert Group on Aid Evaluation (1996), OECD.
- Solignac Lecomte, H-B, 1998. "Options for Future ACP-EU Trade Relations", (ECDPM Working Paper 60), Maastricht; ECDPM.
- UNCTAD, Positive Agenda and Future Trade Negotiations (UNCTAD/ITCD/TSB/10, United Nations publication Sales No. E.00.II.D.8, Geneva, 2000).
- UNDP, "Capacity Assessment and Development: In a Systems and Strategic Management Context"; Technical Advisory Paper No.3; Management Development and Governance Division, Bureau for Development Policy, January 1998.
- WTO, Report on High-Level Meeting on Integrated Initiatives for Least-Developed Countries' Trade Development', WTO document WT/LDC/HL/1/Rev.1, 23 October 1997.

Web site addresses:

www.capacity.org
www.euforic.org
www.oneworld.net/ecdp
www.unctad.org
www.ifc-ngo.org

VII. KEY PRIORITY ISSUES FOR ACP STATES IN RESPECT OF BUILDING VIABLE ECONOMIC PARTNERSHIP ARRANGEMENTS WITH THE EU

Introduction

Development and trade relations between the European Union (EU) and the ACP States have been conducted since 1975 by a series of Lomé Conventions adapted and updated every five years to reflect changing circumstances. At the time of the negotiation of the last of these convention (Fourth Lomé Convention) it was clear that it would be the last and at the end of its ten life in February 2000 new arrangements would have been negotiated to take its place. In 1996, preceding the start of these negotiations, the European Commission issued a Green Paper¹²³ in which it proposed different options for a successor arrangement to Lomé IV. Some of the ideas being promoted in the Green Paper had already become features of the Fourth Lomé Convention when, at the mid-term review (1994–1995) principles like respect for human rights and the rule of law became features of the revised convention as was also an increased role for a variety of actors from civil society. Negotiations for the successor arrangement were launched in September 1998 and concluded in February 2000. Out of these negotiations emerged the Cotonou Partnership Agreement (CPA) which now governs relations between the EU and the ACP States.

In its essential that the CPA retains and builds upon the Lomé “acquiesce” by, for example, incorporating certain new aspects of cooperation involving a political dimension, an enhanced role for civil society through increased participation, a focus on poverty alleviation and a new framework for economic and trade cooperation. With regard to the latter, the CPA embraces four main objectives: (i) to promote smooth and gradual integration of ACP economies into the world economy; (ii) to enhance production supply and trading capabilities; (iii) to create new trading dynamics and foster investment; and (iv) to ensure full uniformity with WTO provisions.

The Lomé type trade regime will remain in force for a preparatory period (2000–2008) after which new WTO compatible trading arrangements will be introduced to enter into force by 1 January 2008, involving the parallel liberalization of trade over a transitional period of at least 12 years. Formal negotiations on the new arrangements will start in September 2002. In preparation for negotiations for this transition from basically non-reciprocal trade preferences to new WTO compatible agreements, the African, Caribbean and Pacific countries are faced with the immediate task of discussing and elaborating the alternative trading arrangements which they could then propose in the form of a joint negotiating mandate to the EU prior to the commencement of the official negotiations. They need to identify arrangements that best promotes their trade and development interests, taking into account their level of development and safeguarding and strengthening their sub-regional and regional integration processes.

This chapter is part of the process of preparing for the negotiations, and it focuses on options for ensuring conformity with multilateral rules of any new EU-ACP Partnership Agreements. The second chapter examines some of the options available to ACP States and assesses their compatibility with WTO rules, which is one critical requirement provided in the CPA. The third chapter provides a roadmap of the priority issues that the ACP States need to address in reaching a negotiating mandate on EPAs, including sub-regional and regional integration processes, another priority emphasized by the CPA.

¹²³ Commission of the European Economic Communities, “*Green paper on relations between the European Union and the ACP countries on the eve of the 21st century*”, 1996.

A. Options for Alternative Trading Arrangements

The Cotonou Agreement

One major issue to be considered by the ACP States and the EU in agreeing on future trade arrangement was the fact that the unilateral trade preferences for ACP countries extended by the EU under the Lomé Convention were not consistent with WTO rules, because they were neither (i) extended to all developing countries and thus did not fulfil the obligations of generalized preferences; nor could they (ii) be considered to fall under WTO rules for regional free trade agreements because they were not reciprocal, i.e. did not include reverse preferences for imports from the EU extended by the ACP States. The ACP States and the EU, therefore, needed a WTO waiver allowing the EU to maintain the Lomé trade arrangements on a temporary basis. The last WTO waiver expired, like the Fourth Lomé Convention, at the end of February 2000.

In the negotiations of the successor agreement to the Fourth Lomé Convention between the ACP States and the EU, attempts were made to find a solution that was WTO compatible. In the end, these attempts failed in the sense that a completely new and WTO compatible framework, substituting for the Lomé trade arrangements already in 2000, could not yet be agreed. The trade arrangements under the Cotonou Agreement are of a temporary nature again, but outline the path towards a new future trading regime between the ACP States and the EU which is hoped to establish conditions which will be WTO compatible. During this adjustment period, scheduled to last until 2008 at the latest, the ACP States and the EU need another WTO waiver for the arrangements established under the Cotonou Agreement. The EU the United Republic of Tanzania and Jamaica on behalf of the ACP countries, approached the WTO about a new waiver in March 2000.¹²⁴ However, at the time of writing a decision on that waiver has not yet been taken by the WTO.

The Cotonou Agreement provides that during the duration of its temporary trade arrangements, i.e. before 2008, the EU and the ACP States would negotiate a new regime that will be WTO compatible. The new arrangements shall be introduced gradually during a preparatory period and will come in essentially two forms. First, new economic partnership agreements (EPAs) will be negotiated which aim at a progressive removal of trade barriers between the EU and the ACP States concerned. It is intended that the EPA will establish reciprocal free trade between the EU and the ACP States concerned, in line with WTO rules on regional free trade agreements. Negotiations on these EPAs, to start in September 2002, “will be undertaken with ACP countries which consider themselves in a position to do so”¹²⁵, i.e. not necessarily with all ACP countries. The intention is to establish the new EPA with all ACP countries which are not least-developed countries (LDCs). The Cotonou Agreement also provides that in 2004 the EU “will assess the situation of the non-LDC 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.”¹²⁶

The second element of the trading arrangements foreseen in the Cotonou Agreement relates to the LDCs. In this regard, the EU has committed itself to “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 LDC building on the level of the existing trade provisions of the Fourth ACP-EC Convention”.¹²⁷ In other words, this second part of the future trade arrangements will

¹²⁴ WTO document G/C/W/187, 2 March 2000.

¹²⁵ Cotonou Agreement, Article 37:5. The Cotonou Agreement is available on the website of the EU Commission, at http://www.europa.eu.int/comm/development/cotonou/overview_en.htm.

¹²⁶ Cotonou Agreement, Article 37:6.

¹²⁷ Cotonou Agreement, Article 37:9. This provision of the Cotonou Agreement also foresees that the new regime for LDC “will simplify and review the rules of origin, including cumulation provision that apply to [LDC] exports”.

seek to avoid the problem of WTO consistency by extending unilateral EU trade preferences to all LDC, including those that are not members of the ACP Group (at this time there are nine LDCs on the UN list that are not ACP countries).¹²⁸

Until these two main new types of preferential trade arrangements are defined and concluded, the Cotonou Agreement provides that specific unilateral EU preferences for the ACP countries continue to be applied, very much along the lines of the trade preferences under the Fourth Lomé Convention.¹²⁹ All industrial exports from the ACP countries continue to enter the EU duty-free. For agricultural products, some amendments of the Fourth Lomé Convention preferences products were agreed.¹³⁰ The special preferences for sugar and beef extended to selected ACP countries under Lomé also remain in force. The banana Protocol was not renewed, as the EU is establishing a new banana regime. Regarding the future of the arrangements for sugar, beef and bananas, it was agreed that they will need to be reviewed in the context of the new trading arrangements, and with a view to their compatibility with WTO rules.¹³¹ What this will mean in practice is not yet clear and needs to be examined closely by ACP States, especially by the non-LDC ACP States.

The WTO Compatibility of Various Options

Non-reciprocal trade preferences

The CPA agreement provides the broad framework of various options for trade and economic partnership between the ACP States and the EU. First and foremost is the continuation of the Lomé type non-reciprocal trade preferences for an interim period lasting until the end of 2007. The continuation of non-reciprocal preferences, with a number of improvements by way of deepening the margins of preferences and widening the agricultural product coverage, has been supported by the ACP States.¹³²

The challenge that ACP States now face during the preparatory period is more effective utilization of the preferences by their exporters. This can also be encouraged by means of removing residual non-tariff barriers on agricultural exports, liberalizing rules of origin, simplifying the procedures, and raising awareness among ACP economic operators about the preferences. Most importantly, greater emphasis must be placed on supporting the ACP States in strengthening the quality and efficiency of their production bases and diversification into agro-based industries and other dynamic export sectors including services. These conditions are *sine qua non* for benefiting from the maintaining the *status quo* during the preparatory period between 2000 and 2007.

¹²⁸ Unilateral trade preferences extended by developed countries to the LDCs (but not, in the same form to other developing countries) are WTO legal under paragraph 2 (d) of the 1979 Enabling Clause, allowing for “special treatment of the least developed among the developing countries in the context of any general or specific measures in favour of developing countries”. (GATT, BISD, 26th Supplement, p. 203, Geneva, March 1980).

¹²⁹ The respective text in the Cotonou Agreement (Article 36:3) provides that “in order to facilitate the transition to the new trading arrangements, the non-reciprocal trade preferences applied under the Fourth ACP-EC Convention shall be maintained during the preparatory period for all ACP countries, under the conditions defined in Annex V to this Agreement”.

¹³⁰ Further details are provided in the paper by S. Tangermann on “The Cotonou Agreement and the Value of Preferences in Agricultural Markets for African ACP.”

¹³¹ The respective text in the Cotonou Agreement (Article 36:4) is “In this context, the Parties 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.”

¹³² Trade relations among developed and developing countries have historically been built on four main pillars viz.: (a) provision through preferences for improved market access into developed countries of the products of developing countries; (b) non-reciprocity or less than full reciprocity; (c) flexibility in the application of trade rules and disciplines; and maintenance of the value of commodity exports. These have often being provided under the broad coverage of special and differential treatment.

There also a number of additional considerations which ACP States would have to examine in respect of trade preferences. These including the following: (a) the diminution of the competitive advantages enjoyed by ACP States in the EU market over the long term, owing to the erosion of margins of preferences as the EU implements and deepens its MFN tariff liberalization under the WTO, including under the reform process necessitated under the WTO Agreement on Agriculture; (b) textile and clothing exporters should expect strong competition from non-ACP producers, especially low cost Asian producers, as the programmed elimination of the EU's multi-fibre arrangement is effected over 10 years up to the year 2005, according to the WTO Agreement on Textiles and Clothing; (c) the fact that ACP States would have to face direct competition from the non-ACP LDCs that would benefit from preferential market access into the EU and potential trade diversion in products like clothing and processed fish; and (d) competition from countries in Latin America, North Africa and elsewhere with whom the EU is negotiating or, has concluded, free trade agreements allowing products from these countries to enter freely into the EU.

The trade preference option is presently effective under the CPA. However, it has also been difficult to defend this option in the WTO, including the present version in the CPA. While most WTO members support the principle behind the Lomé Convention as a special and differential measure in favour of the trade and development prospects of ACP States, the general view among non-ACP members of the WTO is that the trade provisions of the Lomé Convention are not consistent with GATT Article XXIV (on free trade areas and customs unions) and GATT Part IV (Trade and Development on non-reciprocity) taken together or separately. The trade preferences are neither a reciprocal free trade area or customs union in the sense of GATT Article XXIV, nor a generalized system of non-reciprocal preferences in the sense of GATT Part IV. Hence the use of the waiver provision of the GATT/WTO.

The use of the waiver by WTO members has been circumscribed by the Uruguay Round Understanding in Respect of Waivers of Obligations under the GATT 1994 and Article IX of the Marrakesh Agreement establishing the WTO. Members requesting a waiver must justify it with sound economic analysis and arguments, undergo a complex process of requesting WTO authorization, and abide by stringent conditions for maintaining the waiver if it stretches over several years, including annual reviews by the WTO. The Understanding ensures that WTO members will not be able to easily obtain a waiver. If a multi-year waiver is secured from the WTO Ministerial Conference for a continuation of the Lomé-type preference then, as in the case of Fourth the Lomé Convention, the annual reviews apply and would introduce an element of uncertainty over the longevity of the preferences which is not conducive to investor and trader confidence.

The ACP States and the EU have requested a WTO waiver from the MFN principle under the WTO Agreement Article IX as they did for the Fourth Lomé Convention. However, the procedure for obtaining a waiver under WTO rules however is a good deal more onerous than was the case under GATT when the Lomé waiver was obtained. Efforts to secure a waiver for the CPA has proved extremely difficult as WTO Members that have wanted to do so have been able to delay the process using both substantive and procedural arguments. Moreover, the rapidly evolving convention of arriving at all WTO decisions through consensus increases the uncertainty regarding the outcome of the waiver request.

Reciprocity

As stated previously, the CPA provides that economic partnership agreements (EPAs) will be negotiated which aim at a progressive removal of trade barriers between the EU and the ACP States concerned. It is intended that the EPA will establish reciprocal free trade between the EU and the ACP concerned, in line with WTO rules on regional free trade agreements. The EU would be expected to offer immediate liberalization to ACP States while the latter would grant reciprocal liberalization to EU exports after the legally allowed transition period. Therefore, such flexibility is not a withdrawal from reciprocity; it merely provides for differential application of reciprocal trade liberalization commitments.

The concerned WTO rules relate to GATT 1994 Article XXIV (paragraphs 5, 6, 7 and 8) and the relevant Understanding on this article on free trade agreements (FTAs) and customs unions (CUs). The main WTO requirements for free trade areas are substantial trade coverage, no raising of trade barriers against third countries, no *a priori* sector exclusion, a 10-year transition period for interim agreements leading to the creation of the FTA (or CU), and biennial reporting on progress in the formation of the FTA. It is the WTO Committee on Regional Trade Agreements which would undertake the examination of such FTAs in terms of their conformity with relevant WTO rules. The CPA also foresees that the services sector will be eventually integrated into the EPAs and accordingly, the relevant free trade agreement must conform to GATS (General Agreement on Trade in Services) Article V of the WTO.

The formation of bilateral free trade areas between the EU and individual ACP countries places the latter at a disadvantage in terms of negotiation to defend their trade interests. The ACP Group identity is a casualty and with it there is an increased potential for unequal treatment and trade and investment diversion between the different EU-ACP agreements. It may also lead to complex debate among involved parties over the balancing of the spread of benefits and costs of free trade within and between the different agreements. In addition, the extensive review process in the WTO for the 70-plus separate agreements would represent a major administrative burden for all parties and the EU in particular, and become a costly exercise. The review of FTAs conducted by the WTO Committee on Regional Trade Agreements includes initial notification, examination of WTO compatibility, and biennial reporting on the operation of the agreements. Moreover, the reviews are extensive and the report on the compatibility of the agreement would be binding unless there is a consensus against it. A similar administrative burden would be faced by the EU in managing the numerous bilateral agreements.

It has been recognized that the ACP States may need to negotiate and conclude a single free trade agreement at the ACP level, probably under GATT/WTO Enabling Clause conditions (explained below), before concluding the same with the EU. An ACP free trade area would maintain the homogeneity of the ACP Group and strengthen its bargaining position in seeking better conditions from the EU as well as defending the ACP agreement in the WTO. However, it can be difficult for the ACP States to agree on a single plan and schedule for mutual free trade with similar commitments for each partner country in view of the wide differences in their levels of development and factor endowments. Moreover, the expected benefits of free trade are not likely to be seen in all ACP States, considering the wide geographical dispersion of these countries and their costly and weak transportation links.

Accordingly, an alternative option is the formation of regional and sub-regional free trade agreements within the ACP Group. In fact, the ACP Summit of Heads of State and Government recommended that the ACP Group investigate the feasibility of establishing ACP free trade areas. Work to this effect is already advanced in most ACP regions as attested by the free trade programme of CARICOM in the Caribbean, the sub-regional groupings in Africa like ECOWAS, UEMOA, COMESA, SADC the African Economic Community initiative at the continental level and, the Melanesian Spearhead Group among some Pacific ACP countries, as well as the initiation of work on a Pacific Free Trade Area. Fully-fledged ACP free trade groupings with the wider economic benefits they could enjoy, would then be in a stronger bargaining position to enter into free trade agreements with the EU, as in the case of the EU-MERCOSUR agreement and the ongoing EU-GCC (Gulf Cooperation Council) negotiations. This option combines the advantages of free trade areas within groups of ACP countries as a first step, and between these groups and the EU as a second step.

It is implicit, in this alternative, that greater EU financial and technical support should be provided to the ACP free trade areas so as to assist them and their member States in implementing their liberalization programmes in an expeditious and transparent manner and notifying them to the WTO. The ACP free trade areas would help strengthen the supply capacities and trade infrastructure of their member countries and enhance their capacity to take advantage of new trading opportunities and attract new investment. The CPA thus provide for the strengthening of ACP sub-regional and regional

integration processes. In fact it underscores these arrangements as the building block for closer trade relations between the EU and the ACP States. The geographical differentiation approach, however, has a major disadvantage in that it undermines the solidarity of the ACP Group. It also suffers from problems mentioned previously regarding the balancing of costs and benefits, and excessive administrative burdens.

The GATT/WTO 1979 Enabling Clause, more formally called the “Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries - Decision of 28 November 1979,” which has not been affected by the Uruguay Round and continues to operate in its original form, provides legal coverage for FTAs among developing countries. Paragraph 1 of the Enabling Clause allows WTO members to provide differential and more favourable treatment to developing countries without according such treatment to other WTO members, and thus deviating from the MFN principle of non-discrimination (GATT Article I). Paragraph 2 of the Enabling Clause identifies the specific situations in which this permission (legal cover) is accorded and, one of these pertains to “regional trade arrangements among developing countries on a regional or global basis involving the preferential reduction or elimination of tariffs”.

Bona fide RTAs among developing countries must satisfy the following conditions stipulated in the Enabling Clause, paragraph 3, if they are to benefit from its legal permission. They shall be designed to facilitate and promote trade of members and not raise barriers or create undue difficulties for the trade of third countries. Also, they shall not constitute an impediment to the reduction or elimination of tariffs and other restrictions to trade on an MFN basis. Furthermore, they shall in the case of such treatment accorded by a developed member to developing member be designed and, if necessary, modified to respond positively to the development, financial and trade needs of developing countries. Finally, they shall be notified to the WTO Committee on Trade and Development when they are created, modified or withdrawn. These provisions clearly offer more flexibility and are less demanding than the provisions of GATT Article XXIV as further clarified by the Understanding on the Interpretation of that Article. There is no obligation in respect of “substantially all trade” criteria. No time limitation is specified for interim agreements, and biennial reports are not required of the RTAs. The only obligation is that the developing countries members of the WTO which concluded an RTA must notify the WTO Committee on Trade and Development when the RTA is are created (signed and ratified), modified or withdrawn. In such a case, the Committee may establish a working party upon the request of any interested member to examine the RTA in the light of the relevant provisions of the Enabling Clause, or refer it to the WTO Committee on Regional Trade Agreements.

The Generalized System of Preferences

The various forms of reciprocal economic partnership agreements that could be elaborated between the ACP States and the EU may not be suitable to all non-LDC ACP States. The Cotonou Agreement thus provides that in 2004 the EU “will assess the situation of the non-LDC 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”.

The main option in this context is that these non-LDC ACP countries could be accorded preferences under the GSP scheme of the EU which is also offered to all developing countries not members of the ACP Group, subject to meeting certain conditions. A major disadvantage of the GSP option is that it would terminate the contractual EU-ACP relationship as the trade provisions would become a matter of unilateral decision by the EU and no longer subjected to joint negotiations.

A major advantage is that legally *vis-à-vis* the WTO, the GSP is sanctioned by the 1979 Enabling Clause (Article 2(a)). The Enabling Clause is formally called the “Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries - Decision of 28 November 1979.” It is one of the results of the Tokyo Round in which developing countries raised the issue of

the manner in which they should undertake rights and obligations in the multilateral trading system. The Clause established the principle of special and differential treatment for developing countries in trade relations. Its rationale is that developing countries suffer a number of disadvantages in their participation in international trade and that any trade arrangement involving them and developed countries must take these structural weaknesses into account when prescribing rights and obligations. Beginning in the 1980's much of the intellectual underpinnings for special and differential treatment for developing countries began to be extensively questioned, as the Uruguay Round of Multilateral Trade Negotiations took place. Their use in future arrangements is likely to be more selective and result oriented than in the past, but they are likely to remain a lasting feature of trade relations between developed and developing countries.

Least-Developed Countries

The EU has committed itself to “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 LDC building on the level of the existing trade provisions of the Fourth ACP-EC Convention”.¹³³ It will seek to avoid the problem of WTO consistency by extending unilateral EU trade preferences to all LDC, including those that are not members of the ACP Group (at this time there are nine LDC on the UN list that are not ACP countries).¹³⁴

Meanwhile in September 2000 the EU Commission tabled a proposal dubbed the “Everything but Arms” (EBA) Initiative.¹³⁵ Under this arrangement, if accepted by the EU Council of Ministers, the EU would provide duty-free access to EU markets for nearly all goods to all 48 LDCs on the list of the United Nations. Duty-free access would not be provided for arms (25 tariff lines). For three agricultural products (bananas, sugar and rice), the initiative would be implemented in three progressive steps within three years.

The EBA proposal can be seen as an enlightened step towards arresting the marginalization of the the LDCs. But the initiative has important implications for the trade of the commodity dependent ACP States which, under the present arrangement benefit from carefully requested systems of tariffs, quotas and licensing regimes. An added inevitable complication are issues that will arise from the intended reform of the EU's Common Agricultural Policy which will focus more on a generalized lowering of guaranteed prices than on restricting imports.

There are two key issues regarding better market access conditions for LDCs. First, there are the issues pertaining to the real value of the market access concessions that will have to be analyzed in-depth, taking into account a variety of factors. These factors include: (a) product coverage, longevity and applicable rules of origin; (b) assessment of the possible increase in market access opportunities in contrast with those already available to LDCs under various arrangements; and (c) consideration for other measures that could hinder LDCs from effectively utilizing the increased market access conditions, such as stringent sanitary and phytosanitary measures and technical product standards, in their major markets.

Second, the legal framework that would underpin the trade preferences for the LDCs and provide enhanced market access conditions within the WTO has yet to be considered by the WTO membership. The LDC preferences, in terms of WTO compatibility, could be covered by the Enabling

¹³³ Cotonou Agreement, Article 37:9. This provision of the Cotonou Agreement also foresees that the new regime for LDC “will simplify and review the rules of origin, including cumulation provision that apply to [LDC] exports”.

¹³⁴ Unilateral trade preferences extended by developed countries to the LDC (but not, in the same form to other developing countries) are WTO legal under paragraph 2 (d) of the 1979 Enabling Clause, allowing for “special treatment of the least developed among the developing countries in the context of any general or specific measures in favour of developing countries”. (GATT, BISD, 26th Supplement, p. 203, Geneva, March 1980).

¹³⁵ For a summary of the “everything but arms” initiative, see the EU Commission's website, at <http://www.europa.eu.int/comm/trade/miti/devel/eba.htm>.

Clause. Moreover, they are consistent with the decision taken by the WTO First Ministerial Conference in 1996 on a Plan for LDCs. As a follow up to the conference's recommendations on enhanced market access for LDCs, a High-Level Meeting on Integrated Initiatives for Least-Developed Countries' Trade Development was held in October 1997 in Geneva (Switzerland) under the WTO's auspices. At the meeting, a number of developed countries including the EU and developing countries, announced their decision or intention to grant, on an autonomous basis, preferential or duty-free access to selected export products from LDCs. Alternatively, some new instrument has to be elaborated to provide coverage for the special preferences for the LDCs.

B. Roadmap of Priority Issues and Conclusion

Some of the important challenges arising from the preceding chapter to be addressed by the ACP States from 1 January 2001, are identified below.

Firstly, a challenge for both EU and ACP States is to secure the WTO waiver of EU obligations from GATT Article I for the continuing of Lomé-type preferences within the Cotonou Partnership Agreement during the transitional period lasting until December 2007. The waiver was submitted by the EU, Jamaica and the United Republic of Tanzania. This is the most immediate challenge. The discussion of the waiver request has so far been controversial, indicating it does not enjoy consensus among WTO members.

Secondly, a major challenge for ACP States is to make effective use of the transitional period of seven years to create a strong policy, both institutional and entrepreneurial to upgrade industries, and to increase the competitiveness of agricultural production. Strengthening competitiveness would also require improving infrastructural capacities in ACP states and the linkage of transport connexions with major markets. In other words start creating a new culture for policies and enterprises to change from operating in a non-reciprocal arrangement to a reciprocal arrangement. To the extent possible, utilization of new facilities available within the CPA should be maximized e.g., the investment fund and development of enterprises should be encouraged to create capacities for supply and competitiveness (inherently linked with technological development). Seven years is a short time period for industrial transformation, so the focus would be on creating the basis for sustaining industrial transformation in ACP States.

In particular, the CPA recognizes the private sector as the engine of growth, and civil society as the motor for assuring an equitable spread of benefits of the CPA. This recognition must be translated into operational and practical actions and, measures and be implemented on an expeditious basis within the seven year transitional period to create a basis for industrial change and trade growth and thereafter.

Thirdly, that during the negotiations leading to the CPA, the new trade regime and the transitional period to the new arrangement/dispensation were two key issues. The latter has been resolved in the CPA while not the former ! Thus, the ACP States also need on an urgent basis to design on an urgent basis the appropriate economic partnership agreements between them and the EU which respond to their trade and development needs and, which would be consistent with the trend towards greater reciprocity. In general, the bulk of ACP trade relations is conducted with the EU. Options need to be found that go beyond, if any, the EU proposal of free trade agreements with most regions, improved GSP schemes for those non-LDC ACP States not ready to participate in an FTA, and continuation of Lomé-type preferences for LDC ACP States. Options must minimize potential costs such as revenue loss, balance-of-payments problems arising from an influx of EU imports, compound external indebtedness). They also need to look into the arrangements that would replace the commodity protocols (sugar, beef and veal only as the banana regime is being restructured to become WTO compatible while the rum protocol has expired).

These options moreover should build on, reinforce and not undermine the regional integration processes in the ACP regions. Thus such groupings would have to be prepared within the seven year transitional period to enter into reciprocal trade relations with the EU i.e, each grouping selected to have an FTA with the EU should logically consolidate their integration process, especially the formation of FTAs. At present, only UEMOA has a common external tariff, COMESA has completed its FTA and plans to have a common external tariff by 2004. While in the Caribbean much progress have been achieved in terms of trade integration so that a common external tariff could be feasible within seven years, this is not the case in the Pacific where they have only started to discuss the formation of an FTA.

Furthermore, these options must take into account WTO obligations of WTO ACP member States (and the EU). This calls for coherency in trade liberalization in goods, in particular in agriculture and, in services, and in the elaboration of disciplines on trade instruments such as competition policy, intellectual property rights, trade and environment, trade and labour standards. The latter policy instruments are identified in the CPA as areas for cooperation between the two parties. The objective is for ACP States to ensure that their commitments in the WTO in those areas are also reflected in the disciplines they conclude with the EU in the same areas and moreover the latter disciplines should not exceed (in terms of commitments) the former.

Fourthly, cooperation between EU and ACP States on services and other trade policies are demarcated in the CPA. On trade in services, GATS is reaffirmed; the following sectors have been identified as important for strengthening of supply capabilities: labour, business, distribution, finance, tourism, culture and construction and related engineering services; and liberalization of maritime transport. ACP States need to start preparing their services trade agenda at the regional level and in relation to their trade with the EU, especially in those identified sectors, continually ensuring compatibility with their WTO commitments and proposals (now being floated for the services negotiations under the WTO's built-in agenda).

Fifthly, the ACP States need to be mindful about, and guard against, the potential disintegration of the ACP Group that might start if ACP-EU future trade relations are to be conducted on the basis of different trade agreements for different ACP regions and different ACP Groups (LDCs, non-LDCs, those opting for an FTA and those for the enhanced GSP).

Lastly, the ACP States need also to be mindful of the fact that the EPAs that become effective in early 2008 will have to be submitted to the WTO for examination of conformity with relevant WTO disciplines. This could be demanding both for EU and ACP States involved in EPAs. There is firstly the initial notification and examination in the WTO of the EPAs, which can be drawn out over several years as was the case for NAFTA ; it is then followed by biennial reviews for FTAs. The EU has to be represented at each and every examination and report, while the relevant ACP States have to be represented each time their particular arrangement with the EU is the subject. The EU and the ACP States could become the major customers of the WTO Committee on Regional Trade Agreements.

In conclusion, the preparation of a negotiating mandate for the ACP States in respect of economic partnership agreements will require intensive and extensive discussions and negotiations within and among the different ACP regions. It will require the identification of national, sub-regional/regional and ultimately ACP-wide priorities and strategies. This will be a difficult task and the sooner the ACP States begin to analyze and consider various options at national, sub-regional/regional and ACP-wide levels, the better prepared they would be to engage the EU in this different assignment.

PART III

WORKSHOP ON TRADE NEGOTIATION ISSUES IN THE COTONOU AGREEMENT

I. SUMMARY OF DELIBERATIONS OF THE WORKSHOP ON TRADE NEGOTIATION ISSUES IN THE COTONOU AGREEMENT BY THE CHAIRMAN

H.E Ambassador Kelebert Nkomani (Zimbabwe)

The Workshop was jointly organized by the ACP, the OAU/AEC and the UNCTAD/UNDP Secretariats, as part of their respective mandates to assist developing countries, especially LDCs and countries with weak and vulnerable economies to effectively prepare for international trade negotiations and obtain results that would enhance their integration into the global economy. It was aimed at assisting the African, Caribbean and Pacific trade negotiators in Brussels to consider and delineate some of the common key priority issues for the ACP Group in respect of agriculture liberalization and new trading arrangements with the EU, falling within the framework of the ACP-EU Cotonou Agreement signed in June 2000. Geneva-based ACP delegates, experts from some ACP capitals, ACP resource persons and representatives of regional and international organizations also participated and contributed to the deliberations. The list of participants is attached.

Three key issues in the Cotonou Agreement were addressed, namely (1) agriculture trade issues including preferences and market access; (2) options for new trading arrangements between the ACP States and the EU; and (3) elements of a work programme for trade negotiations and capacity building. The terms of reference and the programme of the Workshop are attached. The following three main background papers responding to the three themes of the Workshop were prepared and circulated to the participants: (1) The Cotonou Agreement and the Value of Preferences in Agricultural Markets for the African ACP States; (2) Priority issues for ACP States in respect of Negotiating Economic Partnership Agreements with the EU; and (3) Elements of a Work Programme for Trade Negotiations and Capacity Building. Additional papers were provided by some of the resource persons. The list of documents is attached.

The following is a summary of the Workshop's deliberations prepared by the Chairman.

A. Trade in Agriculture Issues including Preferences and Market Access

The Workshop raised the following main issues in respect of the liberalization of agriculture trade under both the Cotonou Agreement and the mandated negotiations on continued reform of agriculture trade under the WTO:

- (1) It is important to preserve and enhance the preferences provided to ACP States, for both non-protocol and protocol products, even if this is to be done selectively. They remain important to the overall development of beneficiary ACP States.
- (2) The Cotonou Agreement maintains the agricultural preferences provided under the Lomé Convention and provides some improvements, notwithstanding the erosion of such preferences. However, the effective utilization of preferences by ACP States has been limited in general and needs to be improved. Thus, the value of preferences to each ACP State and region should be assessed with a view to elaborating strategies on improving preferences. On the one hand, problems inherent in the preferences such as stringent rules of origin requirements and ancillary requirements such as for documentation need to be addressed and alleviated. On the other hand, problems in production capacities have impeded many ACP States from making full use of the preferences provided.
- (3) The monitoring of utilization rates for preferences would be important in assessing the importance of the preferences to ACP States individually and as a group. Also, an assessment of the costs to ACP States (in terms of missed opportunities) of non-utilization could be

undertaken. The assessment could be used to strengthen the argument for systems, rules and procedures to improve the benefits to ACP States from trade preferences. To this end, the utilization data of ACP States should be made available for public use.

- (4) Trade preferences for agricultural products must be supported by other specific measures, such as better facilities to meet SPS standards set by the EU, so that ACP products can effectively enter the EU market under the preferences.
- (5) Protocol product countries under the Cotonou Agreement will continue to benefit from guaranteed market access and price. For example, the sugar industry is still vital for some ACP States, providing contributions to national output, employment, foreign exchange earnings, research and development, rural development and social services. Thus, even though nominal prices of sugar have been stagnant and real prices have declined, compounded by the recent depreciation of the Euro against the US dollar, the sugar arrangements enable beneficiary ACP States to promote trade and address poverty eradication. These benefits enjoyed by ACP States are inter-twined with the support measures in the EU, providing a commonality of interests. It is thus difficult to envisage the removal of such support measures in the short-term.
- (6) However, there is some recognition that EU support to the ACP States on agricultural products may have to be phased out. Any change must be gradual and orderly, requiring an appropriate period of adjustment, definition of the optimal rate of change and the most effective mechanism for effecting such change. It must be preceded by careful assessment of the costs and benefits of any change to a new dispensation governing ACP-EU trade relations. To this end, the beneficiaries of the commodity protocols need to meet more often to coordinate and harmonize their objectives with respect to mutually supportive action in the Cotonou Agreement and, in WTO negotiations on agriculture.
- (7) It was noted that even though the sugar protocol was included in the EU's schedule of commitments in the WTO, this does not insulate it from being challenged by a WTO Member. There is thus need to monitor any such challenges in the WTO and to develop the legal and other arguments necessary to maintain the benefits of the sugar protocol.
- (8) The EBA (everything but arms and munitions duty-free and without any quantitative restrictions) proposal of the European Commission is an improvement over its other proposals on market access for LDCs. However, it needs careful study to assess its implication for ACP States.
- (9) Within the framework of the WTO Agreement on Agriculture and negotiations (pursuant to Article 20) on further reform of trade in agriculture, there is need for ACP States to fully comprehend the intricacies of the provisions relating to the triad of market access, domestic support and export competition issues. This would enable them to carefully address these issues, especially as regards domestic support and export competition, as some ACP States benefit from these measures and others do not. A more cautious approach is thus required by ACP States in view of complex interests in agriculture trade liberalization.
- (10) Regarding market access, many of the proposals for the mandated negotiations on agriculture under the WTO have the elimination of tariff peaks and tariff escalation as the chief objective. ACP States need to engage on this on the tariff reduction approach to be adopted, in the light of the analysis of the resulting tariff rate differentials between the Cotonou Agreement and MFN rates, and between the GSP and MFN rates. Such work should be conducted on a tariff line basis for individual ACP States.
- (11) Tariff rate quotas have not been effectively fulfilled by developing countries including many ACP States. Thus ACP States need to carry out work that will produce proposals for

improving the utilization rates of quotas. Such proposals should also address the need for clear and consistent WTO rules on the administration of tariff rate quotas. Particular attention should be focussed on country-specific allocation of tariff rates quotas to develop means of protecting ACP-EU commodity protocols.

- (12) In respect of non-trade concerns arising from the liberalization of trade in agriculture in the WTO, opposing views have been expressed among ACP States as between the supporters of a market-based approach for full liberalization of agriculture trade (as in other sectors), versus an interventionist approach advocating government support in view of market failures and the development role of agriculture including externalities (multifunctional aspects). Thus, a balanced approach to non-trade concerns is needed, rather than one constructed on a North-South basis or, on the basis of existing groups (Cairns Group, EU, developing countries). Further analysis is needed on appropriate strategies for ACP States.
- (13) Special and differential treatment (SDT) in agriculture trade should be made meaningful and restructured at the multilateral level with binding obligations to provide for trade preferences in agriculture and reflecting the development realities of ACP States. The initial concept of SDT was that it was a means of integrating developing countries into the world trading system. However it is not being implemented in this spirit. The “development box” issue is related to such concerns and must cover both food security issues and supply capacity issues.

B. Priority Issues for ACP States in Respect of Negotiating New Trade Arrangements with the EU

The Workshop noted that there is clarity in the Cotonou Agreement (Articles 34-38) on the broad parameters of economic and ACP-EU trade cooperation i.e., WTO compatibility but with appropriate flexibility for ACP States (Article 37(7)). The Agreement also provides a built-in time-table for negotiations (Article 37) as follows: (a) official negotiations on WTO-compatible economic partnership agreements (EPAs) for the mutual reduction of trade barriers would start in September 2002 and last until December 2007, following which a new trade regime would take effect from January 2008; (b) in 2004 those ACP States that choose to remain outside of EPAs would hold “consultations” with the EU on other “alternatives” for trade regimes; (c) in 2006, a formal and comprehensive review would be undertaken; and (d) from 1 January 2008, the EPAs would enter into force for implementation over a transitional period. As regards all LDCs, the EU will begin in 2000 and, at the latest by 2005, to allow duty free access for “essentially all” products building on trade preferences provided under the Lomé Convention and to simplify applicable rules of origin (Cotonou Agreement Article 37(9)).

It was recognized however, that the actual options for economic and trade cooperation between ACP States and EU are not clearly established by the Cotonou Agreement. Furthermore, the options available have been made more complex by the variety of other trade negotiations including under the WTO (built-in agenda negotiations on agriculture and services and perhaps a new comprehensive round of negotiations), sub-regional integration processes, the reform of the EU’s common agricultural policy and GSP scheme, EU enlargement to other States, and the EU’s negotiation and conclusion of various FTAs (free trade agreements) with other country groups (such as MERCOSUR) and countries.

While ACP States have a difficult challenge arising from the complexity of issues regarding future trade arrangements with the EU, they should not feel discouraged but rather begin to sort out this complexity and prepare negotiating objectives that preserve and promote their trade and development interests. The confluence of trade negotiations can allow ACP States to negotiate to incorporate ACP-specific interests in these negotiations. In this regard the following key issues emerged from the discussions:

- (1) The ACP States have always had a single agreement with the EU but consideration now needs to be given to what form the new trading arrangement should take. As in the past the options include a single arrangement. It was emphasized that an umbrella agreement between the ACP States as a whole and the EU, would maintain ACP solidarity. It can have within it sub-regional accords that reflect different sub-regional interests or agreements on specific issues. These sub-regional interests need not necessarily be based on geographical regions only but also among like-minded countries sharing certain common interests. This approach can be preferred to one in which the EU is the hub and the ACP States are the spokes.
- (2) Furthermore ACP States have always negotiated with the EU en bloc. Thus, they should be slow to relinquish the advantages of negotiating as a bloc. In this respect ACP States need to carry out analyses and discussions at national and regional levels on areas where their interests are indeed common – an identity of interests – and those where the interests are more regionally based or issue-oriented. Both pan-ACP issues and regional-specific issues could be negotiated within the entire ACP membership to allow coherence and coordination in negotiations with the EU, as well as bloc support for example for the negotiation of regional issues or, for negotiations of non-LDC ACP States having alternative trading arrangements with the EU, or with LDCs.
- (3) However, concern was also expressed as to how an umbrella arrangement could work for the 77 ACP States; it can be complicated and cumbersome. ACP States need to consider whether they should continue to negotiate as a whole using their combined negotiating strength or, whether there could be separate negotiations for sub-regional accords and even bilateral negotiations between individual ACP States and the EU. These options need further analyses. They also need to consider the implications of contractual agreements for the mutual reduction of tariffs and other trade barriers, on reciprocity (on trade creation, trade diversion and fiscal revenue) and conformity with relevant WTO disciplines.
- (4) Another suggestion pertained to taking the trade component out of the EPAs and to examine the appropriate trade regime between the ACP States and the EU. Without a trade component, the EPAs could then be used to address issues related to development cooperation. This would help to address the problem of “developmental differences” among ACP States. Such differences between LDCs and non-LDCs necessitate differing treatment among ACP States within and across regional groupings. Further work would have to be done on the benefits and costs of such an option.
- (5) Another solution to developmental differences among ACP States, for sub-Saharan African countries in particular, would be to find a legitimate basis for a definition of LDC status that could cover most of them. Yet another consideration could be given to a vulnerability index, perhaps providing a scale, which would have the benefit of also addressing the issue of graduation out of the LDC category.
- (6) It was suggested that any new trade arrangement must bring added value to existing values i.e. add to the *acquis* under the Lomé Conventions and Cotonou Agreement (e.g. deeper preferences, expanded product coverage). The added benefit must accrue to both the ACP States and the EU for the arrangement to be sustainable in the long term; i.e. it must not be seen to be an unequal relationship, but one which brings mutual benefits to the two parties.
- (7) Emphasis was also placed on underscoring the importance of strengthening and advancing sub-regional integration processes in the ACP regions to strengthen their contribution to the trade and development of their member States, and ensuring that the new trading arrangements build up these processes as provided in the Cotonou Agreement (and not undermine them). It was also stressed that support should be provided to strengthen the human and institutional capacities of secretariats or sub-regional organizations to assist their member States in elaborating trade strategies and negotiation objectives for their regions.
- (8) The UEMOA Secretariat has signalled its intention to negotiate an EPA with the EU or, at least to start the process of doing so to ascertain whether such an arrangement would be beneficial to its member States. It remains unclear how such an intention would fit within the general negotiation strategy of the ACP States.
- (9) It was also stressed that development dimensions should underpin new ACP-EU trade arrangements in that the focus should include trade and other areas such as investment, policy

flexibility and technical assistance. The Cotonou Agreement is a trade development (and political) cooperation agreement and, thus must be approached from an holistic perspective. In this context also, due recognition and practical expression must also be given to non-legal considerations in the spirit of trade agreements, as in the Cotonou Agreement and the WTO, that emphasize the development of developing countries.

- (10) SDT (special and differential treatment) for developing countries, particularly LDCs and countries with particularly weak and vulnerable economic bases, remains valid as a feature of any development and trade cooperation. In fact, SDT is contained in most trade agreements providing differentiated treatment for some members that have clear disadvantages compared to others. SDT must infuse the new trade arrangements but there is need to re-think, and re-invent it in existing areas (such as agriculture), and extend it to new areas and disciplines such as trade in services. SDT must include flexibility in the pace of liberalization by ACP States (i.e. asymmetrical liberalization as the EU would liberalize faster, even immediately), in product coverage, in policy instruments to handle balance-of-payment problems and in other areas of concern to ACP States. SDT must be made binding so that it can be effectively implemented.
- (11) In this context, it is also recognized that non-reciprocal trade preferences are being eroded but there is no reason to abandon them prematurely and, in fact they should be made more meaningful. Maintaining the discriminatory preferences (only for ACP States) and non-reciprocity (favouring ACP States), present real challenges. To this end, ACP States need to determine in detail the present value of preferences. The analysis would feed into the work on which of the features the ACP States should try to preserve (and whether that should be for the short, medium or long-term), and which instruments should be used. Furthermore, the preferences must be effectively utilized during the preparatory period (until 2007) and the negotiation of new WTO compatible economic partnership agreements (EPAs). They could be used even during the transition period of most likely 10-years or more that will be needed to implement any new trade arrangement from January 2008 (in total ACP States may be benefiting from trade preferences for a further 20 years from 2000). Preferences can be also re-invented and provided, for example in the area of services.
- (12) Accordingly, the granting by the WTO of the waiver requested in March 2000 by the EU and supported by the ACP States is important for the continuation of the non-reciprocal trade preferences during the preparatory period. This waiver request is being blocked by some countries using both procedural and substantive reasons.
- (13) Given that the new trade arrangements must be WTO compatible, there is need to examine the relevant provisions such as GATT 1994 Part IV and the 1979 Enabling Clause, GATT 1994 Article XXIV and the relevant Understanding (for the liberalization of trade in goods), GATS Article V (for liberalization of trade in services), and WTO Agreement Article IX together with the Understanding on Waiver (for a WTO waiver from the MFN clause). To ensure that these WTO provisions respond to the flexibility and SDT required by the ACP States, ACP States should work together with the EU as provided under the Cotonou Agreement (Articles 37:8 and 39) to review WTO rules to reflect ACP priorities. It was stressed that WTO rules are not cast in stone and immutable; changes could and should be made regarding SDT, especially in the context of a new round of trade negotiations. In carrying out such work, recognition could be given to the possibilities for ACP States to seek strategic alliances with other WTO Members to negotiate improvements in SDT. However, ACP States need to be aware and be prepared to also offer some concessions which are always demanded in the member-driven WTO system of negotiating concessions from offers and requests. They must be willing to propose revisions to WTO provisions and to stand up together and fight for changes that reflect their ideals.
- (14) The EPAs are likely to entail the formation of free trade agreements. Hence, work should be undertaken on aspects of the FTAs, including WTO provisions, to address the particular issues of significance to ACP States, such as the meaning of “substantially all the trade”, the length of the transition period, asymmetrical rates of tariff reduction for achieving reciprocity, differing obligations between ACP States and the EU, and others. Work is needed to tie

mutual trade liberalization to STD within a “mixed” free trade agreement between developing and developed countries. to SDT

- (15) The liberalization of trade in services between ACP States and the EU through the EPAs, building upon GATS experience, is provided by the Cotonou Agreement (Article 41). Thus, ACP States have to begin to prepare for such negotiations by building services capacity at national and regional levels and identifying sectors where liberalization could take place at regional, ACP-EU and WTO levels. Experience of other organizations in developing services capacities of developing countries such as the UNCTAD’s Coordinated African Programme of Assistance on Services (CAPAS) could be used in developing or supporting similar programmes for ACP States.
- (16) The EU’s GSP scheme is evolving. Changes are being considered as the present scheme ends in 2001 and a new scheme would be elaborated to enter into force in 2004. Internal EU negotiations on the revision of the GSP have started and should be monitored and assessed so that when there is an opportunity to comment, the ACP States would be in a position to do so productively.
- (17) The special market access treatment for all LDCs in the Cotonou Agreement, wherein the EU agrees to provide duty free treatment to essentially all products of LDCs by the year 2005, was welcomed. Also, it was expressed that the EBA (everything but arms and munitions) without the quantitative restriction proposal of the European Commission, is an improvement over the “essentially all” product coverage. It is part of the EU’s evolving position towards a new and enhanced GSP.
- (18) However, these two LDC proposals need careful analysis as to their real value; identification of other non-tariff barriers (SPS measures, rules of origin) that impede EU market entry by products from LDCs and which should be removed through negotiations; the WTO provisions under which LDC preference could be covered because the Enabling Clause, the most logical provision, is being challenged and other disciplines such as the waiver clause have been tightened; and the potential for special LDC treatment to undermine ACP solidarity by leading LDCs to favour special treatment and remain outside of trade arrangements formed by non-LDC ACP States and the EU. For LDCs in particular, it is the principle of a united regional or ACP market and the negotiating strength that such a group brings, which is of interest to them in effectively promoting their trade interests.
- (19) The sustainability and predictability of LDC preferences is a concern and thus binding these under the WTO is a consideration for the EU.
- (20) The rules of origin, in particular for EBA, LDC preferences and the GSP scheme, need to be assessed to ensure that they support production development and trade expansion in ACP States. In general, the rules of origin need to be made more lenient for ACP States. The use and effect of “cumulation” provisions need to be analyzed further, for example under the EBA. Attention should be paid to “ancillary” requirements such as documentation, to satisfy eligibility and direct shipment.
- (21) In trade-related areas pertaining to competition policy, government procurement and labour, some caution is required in terms of further cooperation with the EU. Thus, further analysis is needed on cooperation encompassing these issues.
- (22) A formal dispute resolution mechanism can be useful to handle disputes that may arise from the more complicated and deeper integration between ACP States and the EU under new trade arrangements.
- (23) Ultimately, for most ACP States, it is the supply capacity (in goods and services) and competitiveness of their enterprises and active engagement in international trade that is critical to exploiting fully the market access opportunities in the EU that may arise from the new trade arrangements. Thus, serious technical work should be done on sectors where the ACP States have (or could have) competitive advantage in goods and services and follow up with capacity building programmes.
- (24) National consultative processes involving the participation of governments and civil society would be important in enriching the definition of negotiation objectives and generate wider support for the new arrangement. Sub-regional positions could be evolved from national positions and ultimately an APC-wide mandate established.

- (25) Exchanging experiences with other countries having free trade agreements with the EU to draw lessons to guide negotiations with the EU. Lessons from the South Africa – EU TDCA indicate for example, that the EU negotiations were driven by its economic interests and that linkages with any agreements must be clearly defined and understood. Bilateral issues with the EU must be separate from multilateral issues in the WTO. At the same time it is necessary to be aware of and to monitor developments in the WTO and also take into account regional integration process such as SACU.
- (26) Technical support and advice regarding these processes must be provided by the ACP Secretariat in collaboration with other organizations both regional and international such as UNCTAD. However, such assistance must be demand-driven so as to have ACP ownership over them.

C. Elements of a Work Programme for Trade Negotiations and Capacity Building

As regards a work programme for trade negotiations, including technical support, the ACP States are faced with a particularly tight negotiations time table built into the Cotonou Agreement (Article 37). The Workshop thus emphasized that ACP States must focus their preparations on the immediate challenge facing them in preparing for the start of formal trade negotiations. In the preparatory period leading to the start of official negotiations with the EU, ACP States require support in identifying their interests and formulating negotiating positions and strategies at the national, regional and ACP-wide levels.

Furthermore, efforts to strengthen collaboration between the Brussels and the Geneva trade negotiators from the ACP region are essential to protect ACP common trade interests in both the EU and the global market and hence, such collaboration via workshops and seminars should continue to be organized. There is also an immediate need to undertake in-depth analyses of issues to support the national, sub-regional and pan-ACP preparations. Such support can be provided jointly by the ACP Secretariat and local and international agencies like UNCTAD and could address the following (reflecting the above-mentioned issues) two broad, interrelated areas:

- Elaboration of an overall ACP umbrella strategy to the trade negotiations (the key to maintaining ACP Group solidarity and identity which is their strength). This may include a basic common approach to issues of common interest, and provide possibilities for catering to various country group interests where they differ by way of (a) a parallel, mutually supportive approach to ACP-EU and WTO trade negotiations; (b) a public awareness exercise to diffuse the information in support of the ACP strategy in various political fora, NGOs, and the international media, emphasizing the human and developmental aspect of ACP strategy and objectives; and (c) impact studies and discussion notes on key issues involved in the ACP strategy such as :
 - the contractual nature of future arrangements, implications of reciprocity (on trade creation, trade diversion and fiscal revenue) and conformity with WTO provisions;
 - possible product coverage, transitional periods for tariff phase down, and structure of EPAs;
 - problems of loss of customs revenue from reciprocal arrangements;
 - rules of origin analyses;
 - special and differential treatment in regional trade agreements between ACP and EU and the improvement of WTO disciplines to cover such SDT in regional trade agreements;
 - possible SDT provisions in WTO agreements that take into account trade and commodity preferences;

- due recognition and effective mechanisms for non-legal considerations captured in the spirit and intention of the rules of both the WTO and the Cotonou Agreement regarding special measures for promoting the development of developing countries;
- possible impact of EPAs and other alternatives on regional and sub-regional integration processes;
- measures to strengthen the agriculture sector and supply-side issues in the light of EPAs;
- possible alternative trading arrangements, including GSP and enhancing utilization of the GSP;
- the value of existing preferences in key product categories, for specific and groups of countries, and possibilities of improvement;
- market access via preferences is not sufficient to guarantee market entry as there may be supply problems and non-tariff barriers (such as SPS measures) which have to be addressed;
- possible proposals on trade in services;
- further analyses on trade-related issues (competition policy, environment, intellectual property) etc.;
- analyses of a possible formal mechanism for dispute settlement;
- learning from and exchanging experiences (best practices) with other countries having free trade agreements with the EU; and
- assess and understand better the negotiating objectives of the EU.
- Support to ACP States in capitals, ACP sub-regional groupings, Brussels and Geneva to strengthen their preparations for identifying negotiating positions through consideration of the above, and additional issues in:
 - policy papers and impact studies; national, sub-regional and ACP-wide workshops; and technical missions;
 - training courses for ACP negotiators, including negotiation simulation exercises and interaction among those in Brussels, Geneva and experts from capitals and sub-regional organizations; and
 - analytical and political briefing material will be provided (including in electronic fora) to each ACP country to strengthen its effectiveness in the ACP-EU negotiations and in WTO negotiations.

D. Next Steps

Discussions in the Workshop indicated that some of the more urgent priority steps forward for the ACP States include:

- attaining the WTO waiver for the continuation of non-reciprocal preferences including the commodity protocols (excluding bananas) until 2007, by seeking and building a consensus around it among the WTO members;
- ratifying the Cotonou Agreement so that its implementation can begin legally;
- seek that the financial and technical provisions of the Cotonou Agreement be released expeditiously by the EU to the ACP States to prepare for the negotiations of the new trade arrangements and to this end adopt and implement a programme of work for the negotiations, while at the same time beginning to strengthen their production and export capacities and competitiveness (in goods and services); and

- seek the expeditious formation of the Joint ACP-EU Ministerial Trade Committee as provided in the Cotonou Agreement (Article 38), and ensure that its annual deliberations reflect and promote ACP trade interests, in that respect its deliberations should be guided by the results of the ACP Trade Ministers Meeting.

II. NEGOTIATIONS ISSUES RAISED BY AFRICAN COUNTRIES IN THE PREPARATIONS FOR THE FOURTH WTO MINISTERIAL CONFERENCE IN DOHA, QATAR

OVERVIEW

This chapter provides an overview of issues raised by African countries in the context of their preparations for the Fourth WTO Ministerial Conference, held in Doha, Qatar, from 9-13 November 2001. The survey of negotiations issues raised in various national, regional and international forum provides some ideas on elements of the positive agenda which will be pursued by African countries in future multilateral trade negotiations.

In the pre-Doha period, the state of play of negotiations in the WTO encompassed the two built-in agenda negotiating exercises underway under Article 20 of the Agreement on Agriculture and under Article XIX of the General Agreement on Trade in Services (GATS). In addition, mandated reviews continued in the TRIPS Council, and on the review of Implementation of the WTO Agreements. In parallel, diplomatic initiatives proliferated on the preparations for the Doha Conference. At the same time, many countries including several African countries were involved in the process of acceding to the WTO and, many others were also engaged in sub-regional trade negotiations, or in trade negotiations with developed countries, such as the ACP States and the EU on the preparations for the official start of negotiations in September 2002 on a new trade regime under the framework of the Partnership Agreement signed in Cotonou (Benin).

African countries were fully engaged in the preparatory process for the Doha Ministerial Conference. Many had undertaken national consultations on their negotiation objectives, several of the sub-regional economic organizations had conducted preparatory conferences to come up with combined common objectives and, several international workshops were held, including under the aegis of the OAU/African Economic Community. While the national positions of various countries with respect to future multilateral initiatives often remained diverse, the discussions and preparations among the African countries enabled them to elaborate some common key objectives in which they all have an interest linked to their development concerns. Hence, notwithstanding the important deficiencies in human, administrative and financial resources, Africa has a much clearer idea of its objectives and possesses greatly improved skills for its presence in multilateral trade negotiations. The attached synthesis of negotiation objectives of African countries from various Doha preparatory negotiation activities provides an indication of the capacity of African countries to understand multilateral trade issues and to attain their objectives in future trade rounds.

An underpinning objective shared by many African countries is that most of them are still having difficulty “digesting” and implementing the results of the Uruguay Round. Thus, capacity building and technical assistance on multilateral trade issues is a primary concern, including the capacity to participate in negotiations on new issues. Another concern is that immediate social and economic problems encountered should be addressed. African countries were particularly concerned with their capacity to meet their food security needs and access to low cost medication to deal with AIDS and other pandemics. The concern of LDCs has been a paramount objective of African countries, given that the bulk of the LDCs is comprised by African countries. Development issues linked to traditional knowledge, transfer of technology, flow of foreign investment, environment and sustainable development have also featured in the agenda of African countries. Last but not least, the need to

strengthen regional and sub-regional economic integration processes in parallel to the WTO and other international trade agreements has been emphasized. Within these negotiation themes, the modernization and operationalization of special and differential treatment for African and other developing countries within the WTO provisions has been a key cross-cutting issue.