

EU-ACP Economic Partnership Agreement Negotiations: Cotonou Undermined

In Feb 2000 the Lome Convention, which had governed economic and political relations between the European Union (EU) and the African, Caribbean and Pacific (ACP) countries for 25 years, expired. Future relations are to be governed by the Cotonou Agreement signed by the EU and 77 ACP countries in June 2000. Cotonou calls for a new era of cooperation, based on equality of partnership and the sovereignty of partners, with the aim of poverty reduction and development being central to its purpose. The trade arm of Cotonou includes a system of reciprocal trade preferences, which is to replace the non-reciprocal preferences provided to the ACP countries under Lome. This system of reciprocal trade preferences is currently being negotiated between various ACP regions and the EU and will operate through the signing of regional Economic Partnership Agreements (EPAs), once negotiations are completed by the end of 2007.

However, due to a combination of factors, EPA negotiations have so far paid limited attention to the values and objectives of Cotonou and threaten to undermine its vision. These factors include the inflexibility of World Trade Organisation (WTO) law with regard to Regional Trade Agreements (RTAs) limiting provisions for Special and Differential Treatment (S&DT), the high levels of liberalisation so far demanded by the EU and the intransigence of EU negotiating positions.

In order to safeguard the lofty values and objectives of Cotonou, in the continuing EPA negotiations the EU needs to be more open to the demands of ACP negotiators and work with ACP countries to find an agreement which requires a lower level of liberalisation than that currently being demanded.

From Lome to Cotonou

The EU is the largest trading partner of the ACP countries, absorbing around 40 percent of their total merchandise exports in 2002. Its importance to ACP merchandise exports cuts across all sectors, with agricultural, mining and manufacturing exports having a similar dependence on the EU market.

The Lome Convention and its system of non-reciprocal trade preferences has contributed to establishing the EU as the ACP's premier export market. Since it was signed in 1975 between the European Commission (EC) (the forerunner of the EU) and 46 ACP countries, the Lome Convention has provided preferential access to EU markets for all ACP countries manufacturing exports and a wide range of ACP agricultural exports [excluding the exports of agricultural products covered by the EU's Common Agricultural Policy (CAP)].

The extent of these preferences has differed across the various export products. Less generous preferences have been offered to exports of those products that provide competition for the EU domestic market producers, limiting the benefits available to ACP exports of these products.

Yet, a number of export products have received generous preferences. These include flowers, vegetables, processed fishery products, tobacco, processed fruit and vegetables, chemicals, footwear, textiles and clothing, and it is ACP exporters of these

Table 1: Preferential margin and volume growth between 1988 and 1997

	Import value in 1997 European Currency Units (in mn)	Preferential margin in 1996	Preferential margin in 2000	Volume growth rate
Agriculture products				
I Live animals, animal products	871	7.4%	6.7%	70.9%
II Vegetable products	2338	2.4%	1.4%	1.8%
III Animal or vegetable fats, oils, and waxes	265	3.7%	2.4%	-12.7%
IV Prepared foodstuffs, beverages, tobacco	2464	8.3%	6.6%	49.0%
Total	5937	5.7%	4.5%	25.9%

Source: Background to Lome, The Inter Press Service (IPS) in 1999.

products that have generally benefited most from the preferences available under the Lome Convention.¹

ACP exporters of sugar, beef, veal, bananas and rum have also benefited from the high guaranteed price available to them, under the various commodity protocols covering these products included in the trade provisions of the Convention. These commodity protocols, whose aim is to secure the export of these products to the EU, generated 1.6bn European Currency Unit (ECU – precursor to the EURO) in export revenue for ACP countries in 1997.²

Due to the non-reciprocal nature of the Lome system of trade preferences, they do not qualify as a “regional free trade arrangement” (FTA) and therefore, require a waiver from WTO regulations. This waiver requires the consensus of the WTO’s members, a consensus that was broken in the 1990s, following a number of legal challenges to the Lome preferences based on the Most Favoured Nation (MFN) principle of the WTO. The most significant challenge came from the dispute over the EU’s banana trade regime, which provided preferential access to EU markets for ACP banana exports.

At the same time, the Lome system of non-reciprocal preferences was being challenged from a developmental perspective, as there was an increasing debate about the long-term benefits to ACP countries from these preferences. A 1997 EU Green Paper stated that “in general, the Lome trade preferences have not been sufficient to enhance export growth and increase diversification”,³ expressing the EU’s doubts about the efficacy of the Lome preferences.

In the light of these challenges, the EU decided that it needed to rethink its trade relationship with the ACP countries in order to comply more fully with WTO rules and in an attempt to find a new developmental trade perspective. The successor to the Lome Convention, the Cotonou Agreement, was to provide the framework within which this was to take place.

Cotonou: The dawn of a new era?

The signing of the Cotonou Agreement in 2000 between the EU and 77 ACP countries, in Cotonou, the capital of Benin, was lauded as the beginning of a new era in economic and political cooperation between ACP countries and the EU. It was to have poverty reduction and sustainable development as its main focus and equality of participation for its partners as one of its guiding principles. These ideas are clearly stated in the Cotonou Agreement.

“The partnership shall be centred on the objective of reducing and eventually eradicating poverty,

consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy”⁴

“ACP-EU cooperation, underpinned by a legally binding system and the existence of joint institutions, shall be exercised on the basis of the following fundamental principles: Equality of the partners and ownership of the development strategies: for the purposes of implementing the objectives of the partnership, the ACP states shall determine the development strategies for their economies and societies in all sovereignty...”⁵

Trade relations under Cotonou are to be governed by the signing of regional EPAs between the various ACP regions and the EU, negotiations for which started in September 2002 and are to be concluded by 31st December 2007. These EPAs are to introduce reciprocal trade relations in order to make Cotonou’s trade regime WTO-compatible, with the Lome preferences staying in place during the transition period. EPAs, being a part of the Cotonou Agreement, are to be negotiated in a manner consistent with the above objectives and principles.

As well as committing itself to upholding the fundamental objectives and principles of Cotonou in negotiating the EPAs, the EU also committed itself to conclude agreements that were “in conformity with WTO rules then prevailing”. But, in doing so, the EU set itself the difficult task of combining this with a commitment to showing flexibility to the ACP countries in recognising their developmental needs. This is because WTO rules only provide limited provisions for S&DT within RTAs.

Box 1: Eastern and Southern Africa EPA negotiation timetable

* **Phase I - Setting Priorities:** will establish the general framework for negotiations and a tentative list of priorities for negotiations. (duration: March-August 2004).

* **Phase II - Substantive Negotiations:** will involve substantive negotiations on all issues relevant to EPAs and will be prepared by ambassadors and senior officials in July 2004 (duration: September 2004-December 2005);

* **Phase III - Continuation and Finalisation:** will see substantive negotiations continued to a conclusion, with disagreements being ironed out and compromises reached. (duration: January 2006-December 2007).

* *Each party is to enact the necessary legislation for the new EPAs to enter into force on January 1st 2008.*

This legislative inflexibility with regard to RTAs is partly due to the fact that RTAs have so far been envisioned as North-North or South-South agreements. They, therefore, lack the S&DT provisions required to support North-South agreements, which invariably include partners at vastly different levels of development.⁶ This legal lacuna has made it very difficult for the EU to combine a commitment to the objectives and principles of Cotonou with an adherence to the rules of the WTO. A summary of the EPA negotiation process, to date, will illustrate this point and will help to analyse the extent to which the EPA negotiation process has lived up to the objectives and principles fundamental to Cotonou.

EPA negotiations so far

Equality of participation

During the first stage of the EPA negotiations, which got under way in September 2002 (and lasted until September 2003), the ACP countries negotiated as a bloc with the EU. ACP negotiators requested that there should be detailed discussions during this first stage on a variety of issues. For example, the ACP negotiators wanted to discuss market access issues, in some detail, on agriculture, which was to be discussed separately due to the complications and development consequences posed by agricultural subsidies paid to EU farmers under CAP.

They also hoped that these detailed discussions would be followed by a legally binding agreement on them, which would determine the direction of the regional agreements to follow.

Nonetheless, the European Commission (EC), which has been given the mandate by the EU member states to negotiate the EPAs, refused this request, and instead proposed general discussions on these issues, all of which were to have no legal bearing on the upcoming stages of the negotiation process. The EC had its way and was thus able to negate the benefits that were potentially available to the ACP countries in negotiating as a bloc. This conveniently left all the hard decision-making procedures until the later negotiation stages, during which ACP countries were to negotiate as a part of the weaker and less stable regional groupings.⁷

During this first stage of negotiations, the ACP countries expressed their concerns about trade liberalisation by requesting that the implementation of liberalisation schedules be linked to development indicators, so that each stage of liberalisation would require the achievement of certain development goals. They also requested a five-year moratorium on trade liberalisation. The EC rejected both proposals outright and said that the back-loading of liberalisation measures towards the end of the proposed 12-year liberalisation

period would be sufficient to protect the interests of the ACP countries.⁸

The ACP countries also requested an increase in the funds available under the Economic Development Fund (EDF), in order to help their economies adjust to the effects of trade liberalisation. Increased EDF funds would also help to offset the reduction in tariff revenues that will result from liberalisation, as they are an important source of finance in many ACP countries. The EC has so far refused to offer any serious increase in EDF funding in response to this request.⁹

This first stage of negotiations has been characterised by serious disagreements between ACP and EU negotiators, in which the EU has shown little regard to many of the requests of ACP negotiators. This frequent unwillingness of the EU to deal with ACP concerns, whilst pushing forward with its own agenda, seriously undermines any concept of equality that is supposed to underpin the Cotonou Agreement, of which EPAs are an important part.

Poverty reduction and sustainable development

In order to qualify as RTAs, according to current WTO regulations, EPAs need to liberalise “substantially all trade”¹⁰ amongst their partners. This ambiguous phrase has been interpreted by the EC as requiring 90 percent of EU-ACP trade to be liberalised in order to allow ACP countries to maintain preferential access to the EU market. Still, 90 percent liberalisation is not the only option available.

A different interpretation of GATT Article XXIV could allow ACP countries a lower level of liberalisation; as, for example, the USA interpreted this clause as meaning 80 percent liberalisation in its recent FTA with the Dominican Republic. Alternatively, by working with the ACP countries to change WTO rules on RTAs in favour of greater options for S&DT, a much greater degree of flexibility could be achieved. This is an option that the Cotonou Agreement envisages, as stated in Article 37:

“The Parties shall closely cooperate and collaborate in the WTO with a view to defending the arrangements reached, in particular with regard to the degree of flexibility available”¹¹

This clause suggests a commitment by the EU to work with ACP countries to find a compromise that offers greater flexibility for S&DT than that which exists under present WTO rules. The fact that the ACP countries and the EU member states together consist of 104 out of the WTO’s 148 members and that these rules are currently being negotiated, under the Doha round of talks, make this a somewhat practical option as well.

Nevertheless, the EU has so far been unwilling to compromise on this requirement of 90 percent liberalisation from ACP countries, despite the fact that it is of serious concern to ACP negotiators, who have called for non-reciprocity in recognition of the different levels of development of ACP countries [most of which are least developed countries (LDCs)] and the EU.¹² This is in response to fears that the level of liberalisation that the EU is calling for will open up ACP economies to competition from more competitive EU products, which could hinder the development of their economies.

This fear is perhaps most pronounced with regard to ACP agricultural sectors. Under the CAP, the EU subsidises the production of a number of agricultural products, which are also produced by ACP farmers, mostly for the domestic market. These products include grains, poultry, milk, cotton and sugar, and if these sectors are opened up to competition with EU exports, subsidised EU exports could capture markets from domestic producers, furthering their marginalisation and increasing poverty.¹³

A recently published Sustainability Impact Assessment (SIA) of the potential affect of an EPA between west Africa and the EU echoes many of these concerns. Wheat and muslin production for local markets is very important for rural incomes in west Africa, and this report highlights the fact that further liberalisation of this sector could drive its producers out of business and reduce food security. Similar concerns are highlighted for the poultry, maize, cotton, fruit and vegetable and fish sectors.¹⁴

Box 2: Poultry liberalisation in Cameroon

- WTO-led liberalisation of the poultry sector in Cameroon has led to a massive increase in poultry imports, from 978 tonnes in 1996 to 22,000 tonnes in 2003, the majority of which have come from the EU.
- These imports contributed to a 26 percent fall in domestic poultry production in Cameroon between 1997 and 2002 and have led to an estimated 92 percent of small poultry farmers (with 500 chicks or less) going out of business.
- With maize being used for chicken feed, maize farmers have also been hard-hit by this liberalisation.

If the measures in the July 2004 WTO Framework Agreement relating to reducing Organisation for Economic Cooperation and Development (OECD) agricultural subsidies are implemented, then these concerns will be lessened. But, it is very unlikely that this will occur before EPAs are to be signed at the end of 2007, as the July 2004 Framework Agreement imposes no timetable on the process, unlike the negotiation of EPAs.

The west African SIA also highlights some potential benefits for ACP agriculture in maintaining preferential access to EU markets through EPAs. Exports of products such as cocoa, fruit, vegetables, fish, coffee and tea could all receive a boost from such an agreement, as there are growing markets for these products and they will be given duty-free access to EU markets.

It also states that west Africa will only benefit significantly from the production of these products if it can expand its agri-processing sectors to increase exports of these products in processed form. For this, to be of benefit to west Africa, the EPA, in which it is involved, would need to recognise the needs of agri-processing sectors and the access of their products to EU markets.¹⁵ It is, therefore, of serious concern that as a result of the EU demanding that EPAs require the liberalisation of 90 percent of EU-ACP trade, ACP countries will also be forced to open their economies to industrial exports from the EU, putting the survival of such fledgling agri-processing industries at risk from EU competition.

Despite the benefits that are available to ACP exporters from maintaining preferential access to EU markets for industrial products through EPAs, a number of industrial sectors are threatened by the high level of liberalisation proposed by the EU, which will give the EU industrial exports greater access to ACP markets. One such example is the textiles and clothing sector, based mainly in southern Africa. This sector is very important to sub-Saharan Africa's (SSA's) economies, as it provides significant export earnings (US\$3.4bn in 1999¹⁶) and has important links with the agricultural sector. It is also a sector that is potentially very important to job creation and industrialisation in SSA, due to its labour intensive nature and the relatively low cost of technology used in production.¹⁷

Yet, the level of liberalisation of EU imports that is being proposed through EPAs could lead to SSA countries having to open up their economies to textiles and clothing exports from the EU. This is of significant concern, as the EU is the second largest exporter of textiles and clothing products and the world's largest exporter of textiles. Also, its clothing and textiles' exports to ACP countries have already done much to threaten the sustainability of ACP textiles and clothing sectors. In recent years, used-clothing imports into SSA, a large proportion of which have come from the EU, have increased quite significantly in response to the lowering of tariffs on used-clothing by SSA countries. Granted that they often provide a cheap source of clothing for the poor, these imports have also led to the decline of clothing sectors in a number of SSA countries, including Zambia, Kenya, Zimbabwe, Senegal, Uganda, South Africa and Tanzania.

Box 3: Textiles' liberalisation in Zambia

- Intensive IMF-led liberalisation in 1990s led to a huge expansion in textiles imports.
- Between 1991 and 2002, the number of textile firms fell from 140 to 8.
- Between 1991 and 2002, the number of people employed by the textiles' sector fell from 34,000 to 4,000.

It is hoped that further development of industrial sectors, such as textiles and clothing, can be used as a stepping-stone to further and deeper industrialisation, which would help SSA countries diversify their economies, a process which is seen as vital to SSA's future development. On the other hand, the level of liberalisation that the EU is pushing for under EPAs could make it extremely difficult for fledgling industrial sectors to compete with industrial imports from the EU, and, therefore, stifle efforts to achieve significant economic diversification.

A wide range of agricultural and industrial sectors are vulnerable and weak in ACP countries and are, therefore, potentially threatened by the high level of liberalisation that the EU is proposing through the signing of EPAs with African regions. This level of liberalisation will not provide them with the flexibility required to protect the sectors most at risk from competition from EU exports, and threatens to reduce food security and economic growth, and increase poverty. Without the EU agreeing to a lower level of liberalisation under EPAs, through re-interpreting the requirements under WTO law or through working with the ACP countries to reform WTO law itself, the development and poverty reduction vision of Cotonou is under serious threat and the Cotonou Agreement, as a whole, could be seriously undermined.

ACP sovereignty

One of the biggest areas of debate in international trade in recent years has been with regard to the Singapore issues. The declaration from the 1996 WTO Ministerial meeting in Singapore mandated the establishment of working groups to analyse issues related to investment, competition policy and government procurement, with a view to establishing multilateral agreements in these areas. It also directed the Council for Trade in Goods to look into issues of trade facilitation to assess the possibility of simplifying trade procedures and changing WTO rules in this area.

Discussions on these four "Singapore issues" have been dogged by controversy and disagreement from the beginning, with many developing countries opposing negotiations on these issues by stating that they would mainly benefit developed countries. They also argued that they did not want to negotiate them

whilst they were still awaiting the outcome of negotiations on agriculture and S&DT measures, from which they had been promised results that would be of benefit to them.

In the run-up to the Fifth WTO Ministerial meeting in Cancun in September 2004, at which it was to be decided whether and when negotiations on the Singapore issues were to begin, many developing countries formally expressed their opposition to these negotiations. The ACP countries expressed their opposition in a pre-Ministerial declaration, in which they stated that the benefits of such negotiations were yet to be illustrated and that they lacked the negotiating capacity to play an active part in them, as quoted below:

"We fully recognise that most ACP states do not have the capacity to meaningfully negotiate these issues...Furthermore, the benefits of negotiating a multilateral framework for all the Singapore issues are not evident, and this, coupled with the fact of our scarce resources and limited capacity in this area, does not provide a basis for the commencement of negotiations in these areas."¹⁸

Overwhelming opposition to the commencement of negotiations on the Singapore issues led to their rejection at Cancun and their exclusion from the Doha round of negotiations (with the exception of trade facilitation).

On the contrary, despite the opposition shown to them by the ACP countries in the approach to the Cancun Ministerial, the EU is currently proposing that all four issues be included in EPAs on a non-discriminatory basis. There is little reason to believe that ACP concerns with WTO negotiations on the Singapore issues are any less apparent in negotiating them with the EU, and in proposing their inclusion in EPAs, the EU is threatening the sovereign decision the ACP countries made pre-Cancun. This is especially evident given that the ACP countries have already expressed their opposition to the inclusion of the Singapore issues in EPAs.¹⁹

ACP sovereignty is further imperilled by the inclusion of the Singapore issues in EPAs, as they threaten to reduce the ability of ACP governments to use investment and procurement regulations as development tools, by restricting their regulation of investment and procurement in support of domestic developmental interests.

Making EPAs more Cotonou-friendly

EPA negotiations have so far paid scant attention to the principles and objectives of the Cotonou Agreement, namely equality of partnership, the sovereignty of participants, poverty reduction and development.

Many of the requests of the ACP negotiators have been refused by the EU without any significant form of compromise, whilst, at the same time they are being pressured to accept the type of agreements that they have rejected at the WTO. There are suspicions that the reliance of ACP countries on the EU for their exports and aid is leaving the EPA negotiation process open to dominance by the EU, at the expense of ACP equality and sovereignty in the Cotonou process.

The ACP countries have serious development concerns, due to the high level of trade liberalisation being called for by the EU through EPAs, and its refusal to debate the developmental perspective in which it is calling for such measures. These concerns are not being taken seriously enough by the EU due to its dogmatic acceptance of the benefits of trade liberalisation. This threatens the developmental focus of the Cotonou Agreement and hopes that it will support efforts to significantly reduce poverty.

If EPAs are to be more Cotonou-friendly, the EU needs to show a greater willingness to consider ACP proposals and to find compromises in discussing them. It also needs to work with the ACP countries to create greater flexibility and provisions for S&DT under RTAs, and reduce the level of liberalisation it has called for so far under EPAs. If this doesn't happen, then Cotonou faces the prospect of being added to the long list of agreements that have failed Africa, despite promising so much.

Endnotes

- 1 Inter Press Service (IPS), "Background to Lome"
- 2 Ibid
- 3 "Green Paper on relations between the European Union and the ACP countries on the eve of the 21st century", 1997, p10
- 4 Cotonou Agreement, "Objectives and Principles", Article 1
- 5 Cotonou Agreement", "Objectives and Principles", Article 2
- 6 "How to make EPAs WTO compatible?", B. Onguglo/T. Ito, ECDPM Discussion Paper 40, 2003
- 7 "Awaiting the grim REPA? A review of the first phase of the ACP-EU trade negotiations", ERO, 11.11.11, December 2003
- 8 Ibid
- 9 Ibid
- 10 GATT Article XXIV:8
- 11 Cotonou Agreement, Article 37, sub-note 8
- 12 "Report on Economic Partnership Agreements (EPAs): Problems and Prospects", JPA Committee on Economic Development, Finance and Trade, Feb 2004
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- 14 "Sustainability Impact Assessment of the EU-ACP Economic Partnership Agreements: West African ACP countries", PWC, Jan 2004
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- 16 "The Africa Growth and Opportunity Act and its rules of origin: Generosity Undermined?" Mattoo, Aaditya, Devesh Roy, Arvind Subramanian (2002), IMF Working Paper WP/02/158
- 17 "The global textile and clothing industry post the Agreement on Textiles and Clothing", WTO Discussion Paper No 5, H. Nordas, 2004
- 18 ACP declaration on the fifth ministerial conference of the WTO, Brussels, August 2003
- 19 "Report on EPAs: Problems and Prospects", article 25, ACP-EU JPA Committee on Economic Development, Finance and Trade, February 2004

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This policy brief has been researched and written by Gideon Rabinowitz of CUTS London Resource Centre (CUTS-LRC), Gordon House, 6, Lissenden Gardens, London NW5 1LX, UK, Ph: 020 7482 8830, Fx: 020 7482 8831 Email: cuts-london@cuts-international.org, Website: www.cuts-international.org.

Conclusion

The Cotonou Agreement gives CSOs an official role in the design and implementation of the political and economic cooperation it envisages. CSOs, both in the ACP countries and the EU, need to take advantage of these opportunities for involvement in order to advocate for EPAs (Economic Partnership Agreements) that pay more attention to the ideals of Cotonou.

CSOs in ACP countries can play an important role in this process by:

- Gaining official access to national and regional negotiating forums on behalf of civil society.
- Raising awareness of EPA issues amongst civil society.
- Carry out detailed research on the potential impact of EPAs in order to support the capacity of ACP negotiators and decision-makers.

CSOs in many ACP countries are severely under-resourced, and therefore, their counterparts in the EU have an important part to play in supporting their advocacy efforts in ACP countries by:

- Lobbying their member states and the EU on behalf of ACP civil society.
- Increasing public awareness in the EU on Economic Partnership Agreement issues.
- Supporting ACP capacity building through providing research support and by working in partnership with ACP Civil Society Organisations.