



# Trade Negotiations Insights

## From Doha to Cotonou

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### Urgent Preparation Needed to Negotiate Economic Partnership Agreements

Lingston Lloyd Cumberbatch - PMU\*

Trade has been a key and constant component in the long-standing relationship between the European Union (EU) and the African, Caribbean and Pacific Groups of States (ACP). Both partners acknowledge in the Cotonou Agreement that trade can improve the allocation of domestic resources, increase the efficiency with which they are used, help bring new technology, increase incomes and increase investment. Key policy actions to achieve these goals include credible trade reforms, export oriented policies anchored on competitive and stable exchange rates, outward oriented regional integration and a co-operative/consultative relationship with the private sector.

However, although there is widespread appreciation of the need for reform, there is also concern, one which is shared by the EU and other international partners, about the shortage of capacity in trade policy formulation and evaluation, shortage of knowledge of the technical issues which underpin world trade today and shortage of negotiators skilled in trade negotiations among ACP governments, regional economic groupings and private sector organisations. More broadly, trade capacity building should cover a range of activities aimed at enabling countries to participate competitively in the global trading system and helping them to exploit their comparative advantage to the fullest extent.

#### A capacity building initiative

As indicated above, the challenge of trade negotiations requires considerable capacity in trade policy formulation and negotiation techniques as well as a thorough appreciation of local production and supply capabilities in the short, medium and long term. The EPAs negotiations will require, in particular, further progress in consolidating regional integration initiatives in ACP

regions including strong commitments from national authorities. The EU Mandate and the ACP Negotiating Guidelines suggest that the negotiations will be undertaken in two phases, a first all-ACP/EU phase followed by negotiations at the regional level. There may even be negotiations at sub-regional level. This requires that the ACP as a Group, regions, sub-regions and individual Member States be assisted in the preparation of studies, negotiating briefs, sectoral and product studies, training and technical assistance.

For its part, the European Community is financing a 20 million euro

capacity building programme in support of the preparation of Economic Partnership Agreements. The principal objective of the Programme is to provide support to ACP countries, regional integration organisations and private sector organisations and other non-state actors in their preparations for the negotiation of EPAs with the EU.

The Programme is managed by a Programme Management Unit (PMU) supervised by a steering committee, made up of representatives of the Commission and ACP. The capacity building programme will provide specific technical assistance to assist the ACP members in their preparation for and conduct of the negotiations. In particular, the PMU is responsible for the organisation and management of activities such as:

- studies for developing negotiating positions for ACP countries and regions,
- training in negotiating techniques for ACP officials leading negotiating teams,
- technical assistance support to ACP regional economic groupings in the area of trade policy.

#### The preparation required

The first point to be borne in mind is that of urgency. Specific studies are required on the content of EPAs, on the linkages between EPAs and other related negotiations (WTO, FTAA, regional integration issues), on strategic issues (such as the identification of negotiating

strategies, policy briefings, etc.), on the economic and fiscal impact of EPAs, as well as on the adjustment costs of EPAs and the identification of flanking measures to address these. Part of the PMU's work will be to organise at the behest of the ACP Group, studies of particular topics some of which are referred to in the ACP Guidelines for discussion under the first phase of the negotiations focusing on the objectives and principles of EPAs and issues of common interest to all ACP States.

Studies may also be conducted along sectoral lines (sugar, beef, cereals, fruit and vegetables, food processing, commodity based industries, different services sectors such as tourism, maritime services,

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In September 2002 ECDPM, the EU-LDC Network and ODI launched a new website: [www.acp-eu-trade.org](http://www.acp-eu-trade.org) a non-partisan source of information, documents and links on ACP-EU trade matters

construction, health and financial services, etc.) and on issues relating to geographical regions and specific types of economies (for example by ACP sub-region, island states; landlocked countries, small economies, LDCs, non-LDCs etc.).

Secondly, ACP countries need to develop their human and institutional capacities in order to be able to secure the best possible terms in negotiations. Training is crucially needed for ACP officials involved in or working with the ACP negotiating teams, with regard to general policy analysis and negotiating techniques, and specific topics and issues to be negotiated with the EU. Training is to be seen in terms of direct backstopping for the negotiations and in relation to the development of trade capacity building in the longer term.

Thirdly, the PMU will support technical assistance to ACP regional economic groupings in the area of trade policy, including technical assistance to enhance the capacity of national trade officials to participate effectively in regional trade policy discussions, as well as targeted technical assistance to ACP regional groupings aimed at consolidating economic integration initiatives. In view of the limited resources of the Programme, the PMU is tasked with ensuring that technical assistance provided to ACP countries and regional integration organisations is highly focused, providing tangible, value-added outputs. Technical assistance will be shared between backstopping assistance of immediate relevance to the current stage of negotiations and technical assistance, directly relevant to the negotiations, but which is to be seen in the context of building longer-term, sustainable capacity.

### A proactive PMU

As a demand-driven Programme, the primary role of the PMU is to respond to ACP requests. However, if the work of the PMU is to support an inclusive process of capacity building and preparations for negotiations within the whole of the ACP, then it will also need to be pro-active in order to encourage the broadest involvement of ACP States and actors in preparing for the negotiations and a bottom up approach to the identification of local initiatives and (sub)-projects, as part of an inter-active submissions process. A variety of communications actions will be undertaken in this respect. The PMU will seek to involve non-State actors in the identification of project needs and to encourage public scrutiny of the EPA process. In parallel, the PMU will promote innovative actions and act as a broker of information, sharing approaches and experiences, as part of the attendant capacity building process.

The PMU will likewise organise a series of workshops and briefing sessions on specific issues, including some of the more technical ones to be dealt with during the negotiations and try to foster the development of functional co-operation links with concerned stakeholders - private sector organisations, producers associations, farmers organisations, etc.

### Co-ordination with other EU projects and other international donors

The PMU is conscious of the need to direct funding towards activities complimentary to those already supported by the EU through the European Development Fund (EDF). To this end the PMU will need to consider specific requests in the context of other EDF funded programmes, at both national and regional levels – the so called National Indicative Programmes (NIPs) and Regional Indicative Programmes (RIPs) funded under the EDF. Whilst trade support has not been given priority in most ACP country NIPs, the 9th EDF makes provision for considerable funding for trade as part of regional programmes. The PMU will set its own work in the context of the 'synergy' principle referred to in the Orientations document drawn up by the Steering Committee and referred to in a set of guidelines for Programme beneficiaries posted on the Programme Web site.

Where possible, the PMU will be proactive in co-ordinating its work with that of other donors. It is intended that regular meetings and exchanges be held with the other main supporters of ACP trade capacity building (EU Member States, UNCTAD, ITC, DFID, AIF, Commonwealth Secretariat, etc.) in order to facilitate this process. A detailed in-house database will be kept to keep tabs on projects funded by the PMU. It is of note that the OECD Development Centre is working on a database of donor funded trade capacity projects in sub-Saharan Africa, due for completion in November this year.

The PMU will also operate in close co-operation with a second PMU in charge of a 10 million euro Support Programme to assist ACP integration into the multilateral trading system (MTS), soon become operational. The main focus of the MTS Programme is to support ACP countries in building capacities in order to effectively participate in global trade negotiations and to implement these agreements. The PMU for the MTS Programme will be responsible for organising technical assistance, studies and training in relation to the Doha round of negotiations, implementation issues and WTO accession. The MTS programme will be implemented in collaboration with international organisations such as WTO Secretariat, UNCTAD, ITC, and the World Bank. The ACP Group at the WTO and the newly established ACP Office in Geneva will play a pivotal role in this process.

### Guiding principles for the PMU

It is worth noting here some of the key principles that will guide the EPA Capacity Building PMU's work. First, the PMU will seek to ensure that there is equitable participation in the Programme among ACP countries.

Second, in order to ensure greater effectiveness of the activities undertaken, capacity building initiatives should build on previous experiences and current best practice. For instance, specific studies proposed should take into account and/or build upon previous studies, where these exist. They should adopt a well-defined methodology, rely when applicable on hard data and evidence and involve relevant stakeholders to be brought into the discussions. Most importantly, all efforts should be made to avoid duplication.

Third, projects should attempt to generate the maximum value added in terms of the effective preparation of the EPA negotiations. For instance, studies should be explicitly linked to specific negotiating needs. Workshop proposals should deal with a clearly defined set of issues relating to ACP-EU trade policy formulation or the process of ACP-EU negotiations. They should be targeted at a clearly defined set of actors involved in or affected by the process of ACP-EU trade negotiations. They should effectively promote broader discussions of the findings of studies and analysis feeding into the establishment of sectoral, national and/or regional positions and help to define the scope of any additional research and analysis required. Training proposals should target specific needs linked to the process of national and/or regional trade policy formulation or to the process of ACP-EU trade negotiations. They should have a clearly identified target group involved in the process of trade policy formulation or of ACP-EU trade negotiations. Similarly, technical assistance projects should be clearly linked to the process of national and/or regional trade policy formulation as this relates to the ACP-EU trade negotiations, to national and/or regional processes of preparations for trade negotiations or directly to the process of ACP-EU trade negotiations.

Finally, projects submitted to the PMU should be integrated with other national, regional or multilateral trade policies, contributing where possible to sustainable capacity building in trade negotiations and trade policy formulation. In order to allow an optimal allocation of the limited resources at hand, PMU funding will be avoided where provision exists for adequate financing under other EDF National or Regional Indicative Programmes.

### Operational criteria

In order to make these principles more operational, the PMU has identified a core of positive elements that will be sought for the approval of project proposals. That is, the projects that are most likely to be accepted are those that:

- contribute to the ongoing process of the negotiations;
- address particular identified capacity constraints related to the negotiations and integrate short-term needs with longer-term capacity building objects in a holistic context;
- provide relevant and accessible outputs to ACP negotiators;
- have a clear focus on the thematic and sectoral areas of concern to the ACP;
- utilise appropriate methodological tools;
- benefit sectors of the economy in which the poorest are engaged (e.g. SMEs, small farmers, artisanal fishermen, etc.) and contribute to the sustainable development of the local economy;
- make use of and help to develop ACP expertise;
- include partners from various but related sectors (officials from different ministries and agencies, academics, experts, private sector and civil society organisations) as appropriate;
- reflect the interests of the private sector and other concerned stakeholders; and
- encourage networking among producers of certain products in order to get their input.

### Practical matters

Requests for specific programme assistance can be introduced to the PMU by ACP governments, by ACP institutions and regional integration organisations and by ACP trade associations or chambers of commerce in association, where relevant, with other interested groups such as academic institutions, consumer groups etc; through their respective governments or regional integration organisations. In view of the finite level of available resources, and procedural constraints with regard to the public tendering requirements of the European Commission, the PMU encourages the submission of requests not exceeding Euro 150,000. Request forms and guidelines on application procedures can be found at [www.acpepa.org](http://www.acpepa.org), or by post at: Programme Management Unit (PMU), IBF International Consulting, avenue de Tervueren 72, 1040-B, Brussels, Belgium, E-mail: [pmu@acpepa.org](mailto:pmu@acpepa.org)

\* Mr. Lingston Lloyd Cumberbatch is the Programme Director of the PMU for a 20 million euro Programme of Capacity building in support of the preparation of Economic Partnership Agreements (EPA), funded by the European Commission. The contents of this article are those of Mr. Cumberbatch and do not necessarily reflect those of the European Commission. Mr. Cumberbatch can be contacted by e-mail at [pmu@acpepa.org](mailto:pmu@acpepa.org). The Programme website is <http://www.acpepa.org>.

### Challenges Facing the Caribbean During EPA Negotiations Junior Lodge - RNM<sup>1</sup>

Negotiations on new Economic Partnership Agreements (EPAs) between the European Community (EC) and African, Pacific and Caribbean (ACP) countries are formally launched on September 27th, 2002. The EPA negotiations represent a major point of departure from ACP-EU trade cooperation relations on two fundamental scores. Firstly, the conclusion of EPAs will mark the end of the non-reciprocal trade agreements - the hallmark of four Lomé Conventions and the present Cotonou Agreement (CA). Secondly, a cluster of six distinct regional based EPAs (REPAs) is likely to emerge in place of the hitherto traditional all ACP-EU Agreement.

A glance at the respective negotiation mandates/guidelines already signals the potential fault lines in the upcoming EPA negotiations. Three discernible areas of differences are patently obvious, viz.:

- approach to the negotiations,
- phasing and time lines of the negotiation, and
- the substance of issues to be discussed.

On the of approach to negotiations, Paragraph 1 of the ACP Negotiation Guidelines is anchored in a cross reference to Article 37(5) of the CA,

“... negotiations of EPAs will be undertaken with ACP countries that consider themselves in a position to do so...”

ACP member states therefore view EPAs merely as one possibility among a menu of options shaping new economic cooperation relations with the EC. Article 36(6) of the CA provides another window to ACP countries, that effectively grants ACP members a breathing space until 2004 to indicate whether or not they are willing to negotiate an EPA with the EC.

### Configuration of the Caribbean

Allied to the issue of approach to the negotiations is that of configuration of the ACP side. Once again, the group's position is legally anchored in Article 37(5) of the CA that refers to “at the level they consider appropriate.” The Caribbean has consistently expressed the view that its favoured position would have been the negotiation of an all ACP EPA. While this is envisaged within both the CA and the Negotiation Mandate, one detects very little appetite within the ACP to pursue this course.

In spite of the investment of considerable thought, the Caribbean region has not detected any attractive alternative to regional based EPAs (REPAs). One alternative - an enhanced GSP - is both unattractive and implausible for a number of reasons. Firstly, its unilateral nature breeds insecurity in that it can be summarily withdrawn by the EC. Secondly, the sense of uncertainty is cemented by the EC promise to overhaul its GSP scheme in 2004. Thirdly, it is doubtful whether a Generalized System of Preferences GSP scheme will deliver the degree of market access that ACP countries presently enjoy.<sup>2</sup>

If REPAs are effectively the only viable option on offer to the Caribbean, how will the region be aligned in negotiating with the EC? The EC mandate anticipates the emergence of REPAs that are built on regional trade integration efforts. 14 of 16 members of the Caribbean Forum of ACP States (CARIFORUM) are also members of a regional integration movement - the Caribbean Community (CARICOM). In spite of the fact that the two non-CARICOM - Cuba<sup>3</sup> and the Dominican Republic - have signed FTAs with CARICOM, the question remains the configuration of the Caribbean. For example, will the Dominican Republic join ranks with all CARIFORUM (except Cuba) to negotiate an EPA with the EC? If the Dominican Republic (DR) negotiates with CARICOM, what would be the economic logic of two constituent parties to an FTA (DR and CARICOM) granting the EU (a block of industrialized countries) higher level of market access that they themselves do not grant each other? Of course, the same argument applies to the Bahamas - a member of CARICOM, but not party to either the CARICOM Single Market and Economy (CSME) or its Common External Tariff (CET).<sup>4</sup>

Another difficulty of configuration stems from by the status of Haiti. As an least developed country (LDC), this CARICOM member automatically benefits from the duty- and quota-free provisions of the EC's Everything But Arms (EBA) initiative. Haiti therefore has the choice of (a) opting out from negotiating a Caribbean-based REPA and therefore relying solely on unilateral market access provisions, or (b) joining CARIFORUM in REPA negotiations with the obvious price of granting the EC reciprocal and preferential access to its market.

EPA negotiations present a second substantive challenge to the Caribbean, namely, how to devise a negotiation strategy for an economically diverse set of countries. The Bahamas' per capita income stood at US\$ 15,000 in 2000, compared with a commensurate figure of US\$510 for Haiti. Even if the Haiti opts out of EPA negotiations, a non-LDC – Guyana - records the region's second lowest per capita income of US\$ 760. By any standard, national economies within the Caribbean are by definition small. But even here wide variance can be detected with the Dominican Republic posting the region's highest GDP of US\$19.7 billion in 2000 while at the other pole of the gamut, St. Kitts' GDP stood at US\$310 million.

### Phasing of Negotiations

During the intra-ACP discussions on crafting a negotiation guideline, the Caribbean argued that the following non-exhaustive but indicative list of issues should fall under the ambit of Phase I negotiations - rules of origin, special and differential treatment (SDT), competition policies, anti-dumping and countervailing measures, standards, investment, services, commodity protocols, trade facilitation, sanitary and phytosanitary measures (SPS), financing the costs of adjustment, programmes aimed at addressing supply side constraints, dispute settlement measures, WTO-compatibility, intellectual property measures and trade and environment.

Paragraph 12(a) of the ACP Negotiation Mandate enumerates the full basket of issues that transcend the formal issues of principles, scope and legal basis of an EPA. These issues, from the perspective of the Caribbean form a cluster of interests common to all ACP States requiring common action and negotiation. Consequently, given DG Trade present zeal in "harmonizing" its rules of origin (a euphemism that signals the negotiation of the same rules of origin irrespective of the level of development of the EC's trade partner) and the high implausibility of the EC proffering six differing rules of origin, why should the ACP not band together?

A Phase I that addresses substantive issues must, by extension, be sufficiently lengthy in order to adequately tackle the bundle of common concerns. For example, measures aimed at reforming the Common Agricultural Policy (CAP) are scheduled to be implemented in 2006. Given the impact of this major EC policy instrument (enhanced under reciprocal trading arrangements), it would be difficult to imagine the ACP making commitments without full cognisance of the ramifications on their agricultural exports and domestic markets.

The issue of WTO-compatibility is yet another issue that is impinged by policy developments external, yet pivotal to EPA negotiations. Everyone accepts that given the thrust of the Doha Ministerial Declaration, WTO-compatibility is a moving target. Negotiations on the Doha Round are scheduled to be completed in 2005, two years ahead of the close of EPA negotiations. In light of the WTO debate on GATT Article XXIV 5(c) and 8(a) and (b) – referring respectively to length of transitional periods and the calculation of substantive trade within RTAs, clarity on these rules is mandatory before the Caribbean region can grant binding commitments. Furthermore, the region has an intense interest in the outcome of discussions on SDT, pursuant with Paragraph 44 of Doha Ministerial Declaration.

Allied to the question of the length of Phase I is the relationship between the two Phases of negotiations. Article 10 of the EC Mandate summarily states that "negotiations on a regional level should start in January 2003 at the latest." In spite of this formal provision and perhaps in response to the ACP Negotiation Mandate that allows for the possible start of Phase II talks in September 2003 (Article 12(a)), an early start to regional negotiations is highly improbable. As reward for its flexibility, the EC hopes to extract agreement on negotiation Phases that are not sequential but rather parallel. The Caribbean's stance on this issue should be determined by the extent to which Phase I handles substantive concerns. The interrelationship between the two

Phases also raises the question of the legality of any agreement forged at the All-ACP level. Will such talks result in a Framework Agreement between the ACP and EC or will there be a Single Undertaking signed by all ACP (or regional subsets) with the EC?

### Substantive Trade Agenda

#### *Common Agricultural Policy*

EPA negotiations will challenge the Caribbean to formulate policy positions on a bundle of issues. By way of illustration, key subject areas include CAP, SDT, market access, reciprocity, trade-related concerns, services, adjustment costs and supply side constraints. The reform of the CAP initiated by Agenda 2000 involves a shift from price support to direct payment to farmers. This is consistent with the WTO Agreement on Agriculture demanding a decoupling of the link between state financial support and export volume. One of the results of this policy switch is a marked fall in the price of EC agricultural products. CAP reform dents the economic rationale for Caribbean farmers to export to the EC.

The marked erosion of preferences as a result of both MFN liberalization compounds the decline in prices and the plethora of trade agreements signed between the EC and other countries or groupings. This development is consistent with the trend of marked decline in agricultural commodity prices over the last 25 years. According to EUROSTAT data, while total Caribbean exports to the EU more than doubled in value between 1990 and 2001 – from •1.42 billion to •3.12 billion, Caribbean agricultural exports grew 51% in value from •0.69 billion to •1.42 billion during the similar period. Faster growth of non-agricultural exports to the EU has pushed the share of agricultural exports from 50% of total exports in 1990 to 33% in 2001.

The data support the anecdotal evidence of the Caribbean no longer an exporter of labour intensive agricultural products facing low and volatile prices. A further signal of this altered trade profile is provided by a cursory glance of the top ten Caribbean exports (measured in terms of value) to the EC in 2001. Only three agricultural products – contributing to 25% of total exports – rum, sugar and bananas, featured among the top ten Caribbean exports to the EU. The statistics of decline in the relative trade performance of mature industries threaten to mask more than they reveal. In terms of exports of goods, for example, St. Kitts remains dependent on exports of sugar, St. Lucia, St. Vincent and Dominica on bananas and Guyana's on sugar, rice and rum. While Jamaican exports have diversified in the last decade, sugar and bananas still feature heavily. Agriculture's importance to regional and national economic welfare is best illustrated by one statistic – the sector generates one in every three jobs within the region.

The economic importance of agriculture extending far beyond trade concerns (the so-called multi-functionality principle) compels Caribbean trade negotiators to greet with caution any proposal that further erodes the value of preferences in major sector to the regional economy. This consideration must be balanced by the fact that the presence of the CAP not only generates above world market prices, but also thanks to reciprocity, poses an even greater threat to the region's domestic producers. EC milk powder dumped in the Dominica Republic provides the most recent proof of the trade distortion impact of the CAP on ACP producers.

#### *Special and Differential Treatment*

Paragraph 44 of the WTO Ministerial Declaration states that " We therefore agree that all special and differential treatment provisions should be reviewed with a view to strengthening them and making them more precise, effective and operational". The focus of the Special Session remains that of seeking unanimity on the areas where existing rules can be strengthened and where applicable the provision made

mandatory. The Caribbean interest in this issue stems from the obligation of reciprocity that is embedded in CA Article 36(3).

What are the elements of SDT that the region clamours for? The roster includes asymmetric obligations to trade liberalization with respect to both product coverage and length of transitional period and definition of substantive trade. In spite of these issues falling under the ambit of the Committee on RTAs, they nevertheless represent a tangible form of SDT, in terms of providing derogation from WTO obligations.

The recent EC submission on SDT to the WTO (TN/CTD/W/13) hints of Europe's posture in upcoming EPA negotiations. The EC declares its support for the Doha Declaration to make SDT operational, effective and precise, yet leaves behind a trail of evidence suggesting that it would rather diluting this modest goal. ACP countries must also ponder on the double face of the EC concerning WTO rules. The EC apparently sees no disjuncture between its claim to support the application of stricter WTO rules and its repeated reference in its mandate to flexible WTO rules.

### Reciprocity

Another major issue thrown at the Caribbean by EPA negotiations is that of the cost of granting the EC enhanced access to the region's market (yet another euphemism – offering reciprocity). According to the 2001 Annual Report of the Eastern Caribbean Central Bank, border taxes as a share of recurrent fiscal revenues in six OECS countries area during that year of review were: Antigua (66.1%), Dominica (54.8%), Grenada (61.2%), St. Kitts (50.7%), St. Lucia (55.4%) and St. Vincent (50.2%). The policy options facing the loss of a source accounting for greater than one-half of all fiscal receipts are rather limited. Obviously, VAT is an option – either introducing it or hiking its rate. This potential course of action comes with a hefty political, economic and administrative price tag.

Admittedly, the granting reciprocity is muted by the fact that the EU is not the major source of imports. However, the Caribbean is party to two processes – one multilateral (World Trade Organization - WTO) and the other hemispheric (Free Trade Area of the Americas - FTAA) - that threaten traditional sources of fiscal revenues. The cost of reciprocity goes far beyond the loss of fiscal revenue. Granting the EC increased access to Caribbean markets promotes the displacement of national producers with the attendant loss of jobs, productive capacity and growth potential. Under such circumstances, both the retraining workers and instituting appropriate anti-dumping and safeguard measures while required, are also taxing on a small and resource-constrained economy. The net welfare effect of granting reciprocity can be exacerbated in an environment where there is a fiscal deficit depriving governments of the means to cushion economic shocks.

### Coherence with Other Trade Negotiations

Reference was made earlier to the effort within the WTO arena to secure improved SDT terms. Progress on the present work programme on this issue in Geneva would obviously impact on EPA negotiations. Agriculture represents another candidate area where results in the multilateral forum can spill over into the bilateral.

It is widely known that the Caribbean is an active participant in the efforts at constructing an FTAA by December 2004. Sequencing of the three theatres of negotiations forms yet another important challenge to the region. The MFN provision embedded in Article 5 (1b), Annex V of the CA, compels Caribbean countries to automatically grant to the EU market access concessions similar to those conferred on non-developing countries within the FTAA process - Canada and the USA. The earnestness attached to this legal provision by the EC is borne out

by a similar reference in its EC mandate (3.2), namely:

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



More work needs to be done on determining whether the wording in Cotonou makes it mandatory to automatically confer to the EC MFN treatment granted to other developed countries beyond market access concessions.

What remains clear, however, is that the importance of the FTAA negotiations assumes even greater relevance to the Caribbean. The sequencing of negotiations does not assist in allaying some of the fears within the region. After all, talks on establishing the FTAA are scheduled to conclude in December 2004, three full years ahead of the scheduled end of EPA negotiations. The MFN provision of CA might render Caribbean – EC talks on EPA subsequent to the outcome of FTAA talks redundant.

### Summary

The nature and timing of EPA negotiations poses a series of major challenge to the Caribbean. The talks' built-in agenda of reciprocity comes with massive price tag to participating countries within the region. Moving from a one size fit all trade agreement spanning over 75 countries to one tailored to 14 or 16 countries forms poses yet another layer of difficulty. The region comprises a disparate band of countries that are at varying levels of development, possess differing trade profiles and contrasting trade regimes. Formation of a coherent policy platform is compounded by CARICOM's membership of an LDC while two other CARIFORUM countries belong to no regional integration movement.

Exogenous policy developments that impinge on EPA negotiations threaten to squeeze the menu of options that the Caribbean will face vis a vis the EC. Reform of the CAP, outcome of both the Doha Round and FTAA will filter into the negotiations. Given the cost of reciprocity that EPAs entail and the uncertain policy environment, Caribbean countries are duty bound to approach EPA negotiations with due caution.

A survey of the Caribbean's negotiation stance on EPAs would be incomplete without a reference to the present economic plight of Dominica. This small island state, heavily dependent on banana exports, has suffered two exogenous shocks within the last two years. First, the 1999 WTO DSB panel ruling against the EC banana import regime that resulted changes to the COM in bananas in 2002. The net impact of the change the EC banana import regime was to accelerate the decline in Dominican banana exports to the EC. Statistics gleaned from the Windward Island Banana and Export Development Company (WIBDECO) reveal that Dominican banana exports declined by 38% to 16,725 tonnes in 2001. During the course of the GATT/WTO dispute, the country's export of bananas declined by 77.5% from 74,194 tonnes in 1988.

The second exogenous shock stemmed from the aftermath of September 11, 2001 that resulted in a rapid downturn in tourist arrival to the region. The terrorist attack exacerbated the slowdown in the global tourism industry. The plight of the Dominican banana industry has its origins in the multilateral trading system. Once again, we saw a blunt display of the inflexibility of WTO rules in accommodating the special needs of small vulnerable states that rely heavily on both one commodity and one market. If both the EC and the Caribbean agree that EPAs must be development oriented, we must translate this into programmes and measures that deliver tangible benefits to the region's population.

**ENDNOTES**

<sup>1</sup> The author is the RNM Representative in Brussels. The views expressed in this note are those of the author and should not be attributed to either the RNM or the CARIFORUM member countries that it represents.

<sup>2</sup> The EC's Everything But Arms (EBA) programme is an enhanced GSP where, for example, the rules of origin are even more onerous than those applicable under the CA.

<sup>3</sup> Cuba, although a member of the ACP, is not a signatory to the Cotonou Agreement and resultantly not a direct participant in EPA negotiations.

<sup>4</sup> The CET is rather a misnomer that is popularly referred to as the uncommon common external tariff. Not only are participating member states at differing points within the agreed schedule of tariff reduction, but also countries are free to apply varying levels of CET based on four product listings. Compounding the multiplicity of applied tariffs within the region is the fact that it remains uncertain (a) when the CSME will be concluded and (b) if free circulation of goods is an objective of the project. Obviously, an absence of both a uniform CET and free circulation of goods undermines the economic logic of forming an FTA with a third party. See Caribbean Export, CARICOM External Trade Regulatory System, 2001 and WTO Secretariat, *Caribbean Community and Common Market: Biennial Report on the Operation of the Agreement, WT/REG92/R/B/1;L359, 2000.*

## Special And Differential Treatment At The WTO And Its Relevance For The ACP/EU Negotiations<sup>1</sup>

The Cotonou Agreement stipulates that "economic and trade cooperation shall be implemented in full conformity with the provisions of the WTO, including special and differential treatment" (Article 34.4). It thereby sets the level of special and differential treatment (S&D) at the WTO as the "legal ceiling" of the level to be achieved with the Economic Partnership Agreements (EPAs) between the EU and ACP countries, i.e. the S&D level agreed upon in the EPAs should be no less than that achieved at the WTO. As a result, the ongoing WTO negotiations to review all S&D provisions, as mandated by the Doha Ministerial Declaration, are of crucial importance to the outcomes of the upcoming ACP-EU negotiations. This point was most recently highlighted by ACP Secretary-General, Jean-Robert Goulongana. On September 10, Mr. Goulongana met with and requested the new Director-General of the WTO, Supachai Panitchpakdi, to set up S&D rules for ACP countries which are similar to those contained in the Doha Ministerial Declaration..

### Doha Mandate on S&D

In the Doha Ministerial Declaration, Ministers reaffirmed that S&D provisions were integral to the WTO Agreement and noted the concerns about how the provisions had not satisfactorily addressed the constraints developing countries faced. Ministers furthermore agreed to review all S&D provisions "with a view to strengthening them and making them more precise, effective and operational". To this end, they instructed the Committee on Trade and Development (CTD) to look into ways of how this could be done and to report to the General Council with "clear recommendations for a decision" by 31 July 2002.

Based on the CTD's work programme adopted in December 2001<sup>2</sup>, the CTD in its July 2002 report to the General Council recommended, inter alia, that the timeframe for the CTD to complete its work be extended to 31 December 2002; and the General Council agree to establish a monitoring mechanism for S&D, while the special session of the CTD continues to elaborate the functions, structure, and terms of reference of the mechanism. By July 31, 2002, more than 11 proposals had been made, including joint proposals by the Africa Group<sup>3</sup>, the Consultative Group of Least Developed Countries<sup>4</sup>, and the Like Minded Group<sup>5</sup>.

To make the best of this mandate to the CTD within the prescribed

timeframe, a major objective is now to determine how best to reform the system of S&D in order to resolve the concerns over the failure to properly address the constraints developing countries face and the concerns over the unsatisfactory nature of the provisions. A good outcome of the exercise should include: strong S&D provisions that are readily and fully implemented and complied with; a mechanism for monitoring the provisions; and a coherent integration of S&D provisions in the WTO rules through adopting new overarching rules.

### The concept of S&D in the WTO

When everything is said and done, the importance of S&D comes down to a simple question: are developed countries willing and able, to support changes to WTO rules, to put their resources into programmes, that directly address the constraints developing countries face in seeking to implement and comply with their obligations and to equitably or competitively benefit from opportunities the multilateral trading system is meant to avail? It depends on the extent to which the answer to this question is in the affirmative.

The essence of S&D should not be the availability of resources from developed countries and international organisations. This should remain as merely a component. The essence of S&D should be re-conceptualised through changes to WTO rules. The rules will address the financial aspects, but far more importantly they should fully ensure a balance of rights and obligations, equity, and the promotion of the development prospects of developing countries.

A fundamental objective of the WTO as an institution regulating international trade relations is to improve living standards for the people, particularly in developing countries. S&D, as fundamentally part of the means for attaining the development objectives of the WTO, should be subject to regular and systematically periodic evaluations to determine any appropriate improvements to be made; but this should entail a broad review of the performance of the entire WTO system in enforcing and adhering to the rules on S&D as well as the suitability of those rules themselves. It is in the context of such exercises that improvements to be made to the rules and to the system could be determined.

Such exercises would do well not to be narrowly restricted to reviews of actual utilisation of the rules; the more important problems to be addressed would precisely be the reasons for non-utilisation. These reasons include:

- Lack of coherence in global economic policy-making, where the flexibility allowed through S&D is practically denied or proactively discouraged. Addressing this issue would require that international organisations universally accept the importance of the concept and embody it in their core constitutive and operational objectives or programmes.
- The provisions are written in language that makes them difficult or unclear to legally enforce. They would need to be clear and create obligations that should be implemented and complied with.
- Countries often lack the resources to invoke S&D provisions. Thus, adequate resources would need to be provided to ensure the compliance with and enforcement of S&D provisions.
- Public opinion in developed countries and to some extent in developing countries is not strong or loud enough to influence political decisions and results in favour of giving prominence to S&D provisions in bilateral, plurilateral and multilateral negotiation. An influential degree of public opinion internationally and in the individual countries would be necessary to compel governments to give prominence to S&D.

The causes underlying non-utilisation suggest that addressing the difficulties developing countries face in seeking to utilise S&D

provisions, should go beyond experience with actual utilisation, and look into the legal nature, the economics and politics of S&D as a concept.

### Elements of a legal system for S&D

A legal system for S&D is necessary in order to provide an overall framework for the effective operation of existing provisions in the WTO Agreement. Such a system would also be of relevance for the adoption of new S&D provisions in future negotiations, such as the EPAs. The legal system should contain the following elements:

**Enforceable S&D.** For S&D provisions to be effective, they should be clear and undoubted obligations that can be enforced. Two ways have been proposed at the WTO to convert the best endeavour language, that is "the shoulds", to mandatory obligations. The Like Minded Group and Thailand<sup>6</sup> have proposed to replace the "shoulds" with "shalls," provision by provision, perhaps in some instances adding consequential clauses to complete the obligation. Alternatively, the African Group has suggested scheduling the provisions to be made mandatory, and then in one provision of a General Council Decision, state that they are made mandatory. The effect of this would be that, when interpreting and applying those provisions, it would be understood that they are mandatory.

**Necessary resources.** The necessary resources should be secured and earmarked in the context of permanent or standing arrangements. Regarding financial arrangements for S&D, the Africa Group suggested that a fund on S&D could be established as a standing facility within the Doha Development Agenda Global Trust Fund, through which Members could meet their S&D financial obligations.

**Monitoring mechanism.** The Africa Group proposed the establishment of a monitoring mechanism to regularly evaluate the effective utilisation of S&D provisions, and to make recommendations for any appropriate improvements in the rules, and provide a forum for consultations among Members designed to ensure compliance with S&D provisions. Such a mechanism could have three joint and reinforcing elements, namely the holding of special annual sessions of the General Council or dedicated agenda items at the biennial sessions of the Ministerial Conference; the establishment of a Sub-committee on S&D as a subsidiary organ working under and reporting to the CTD; and a requirement that all WTO committees keep S&D as a standing agenda item for all their meetings, and that they produce regular reports on S&D.

**Transition periods.** Transition periods should not be the primary form of S&D treatment. They should be designed as adjustment periods, and ensure that the necessary resources are secured and earmarked.

**Graduation.** The length of transition periods should be objectively determined, as suggested in both the pre-Doha proposal by a group of developing countries (WT/GC/W/442) and to some extent the Africa Group proposal. Country classification and evaluation systems, as for instance developed by the World Bank and UNDP, could assist in determining the utility or otherwise specific elements of S&D, based on the evaluation of objective criteria, such as debt level, level of industrial development, human development index, literacy, and life expectancy. However, graduation should not mean the abolition of S&D for advanced developing countries.

**Capacity building.** While the WTO Agreement and the Doha Ministerial Declaration are replete with technical assistance provisions, it is generally felt that these provisions have not been implemented or complied with in a satisfactory manner. There is need for a coherent approach to WTO assistance and capacity building in particular. To this end, capacity building activities should go beyond workshops

and seminars, and technical missions, which so far have formed the core of the WTO's activities in this area. These activities should also address the supply side constraints of developing countries as well as build domestic skills in all WTO sectors.

### Relevance to the ACP-EU negotiations

The current round of trade negotiations at the WTO is set to be finalised by January 2005, while the EU-ACP negotiations will be concluded by January 2008. However, rather than using the outcomes of the Doha round as a basis for ACP positions, ACP countries should endeavour to formulate their strategic positions on both scenarios in parallel. This approach would ensure that the ACP's objectives are compatible with WTO rules and achieve the most favourable outcome on S&D in the ACP-EU negotiations.<sup>7</sup> To this end, efforts should focus on two levels. First, ACP countries must ensure that the S&D concept, as "revived" in the Doha Ministerial Declaration, is consolidated through a sustained political support to secure its relevance in post-Doha negotiations. Second, the current review of S&D provisions at the WTO, in particular the identification of S&D provisions that should be mandatory, provides an important opportunity for ACP countries to contribute towards a consolidated framework for S&D that could be applied to the EPAs. Discussions at the WTO on the review of existing and the definition of new S&D provisions are underway in a number of areas of interest to ACP countries, including agriculture, market access for non-agricultural products, services, rules on regional trade agreements, and specific provisions for least-developed countries and for small economies. At the same time, ACP countries can draw on the ongoing work at the WTO to propose concrete language to operationalise the "best endeavour" language in the Cotonou Agreement.

### ENDNOTES

<sup>1</sup> This article is based on extracts from the draft policy paper on S&D prepared by Francis Mangeni for ICTSD.

<sup>2</sup> WT/COMTD/36, searchable at <http://docsonline.wto.org/>.

<sup>3</sup> TN/CTD/W/3 series

<sup>4</sup> TN/CTD/W/4 series

<sup>5</sup> TN/CTD/W/1 and 2

<sup>6</sup> TN/CTD/W/7

<sup>7</sup> Manuel Tortora (2002) "Annotated agenda on the ACP parallel trade negotiations at the WTO and with the EC: The Critical Path and the work to be done".

**TNI Editorial Team:** Christophe Bellmann: ICTSD  
Sanoussi Bilal: ECDPM – ODI



International Centre for Trade and Sustainable Development  
Tel : + 41 22 917 84 92  
E-mail : [cbellmann@ictsd.ch](mailto:cbellmann@ictsd.ch)  
Web : [www.ictsd.org](http://www.ictsd.org)



European Centre for Development Policy Management  
Tel: + 31 43 350 29 00  
E-mail: [tni@ecdpm.org](mailto:tni@ecdpm.org)  
Web: [www.ecdpm.org](http://www.ecdpm.org)



Overseas Development Institute  
Tel: + 44 20 7922 0300  
E-mail: [tni@ecdpm.org](mailto:tni@ecdpm.org)  
Web: [www.odi.org.uk](http://www.odi.org.uk)

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## Calendar

### WTO Events

30 Sept	Working Group on Trade, Debt and Finance
1-2 Oct	Council for Trade in Goods
3-4 Oct	Trade Negotiations Committee
7-9 Oct	Committee on Trade and Development
14 Oct	Committee on Trade-related Investment Measures
15-16 Oct	General Council
16-18 Oct	Negotiating Group on Rules
17 Oct	Committee on Technical Barriers to Trade
21 Oct-1 Nov	Council for Trade in Services
1 Nov	Committee on Subsidies and Countervailing Measures
4-7 Nov	Geneva Week
6 Nov	Negotiating Group on Market Access
7 Nov	Sub-Committee on Least-Developed Countries
7-8 Nov	Committee on Sanitary and Phytosanitary Measures
11 Nov	Dispute Settlement Body
12 Nov	Committee on Regional Trade Agreements
13-15 Nov	Dispute Settlement Body, special session
14-15 Nov	Working Group on the Relationship between Trade and Investment
20-21 Nov	Working Group on the Interaction between Trade and Competition Policy
21-22 Nov	Committee on Agriculture
22 Nov	Council for Trade in Goods
25-28 Nov	Council for Trade-related Aspects of Intellectual Property Rights
25-27 Nov	Negotiating Group on Rules
25-26 Nov	Committee on Trade and Development
28 Nov	Dispute Settlement Body
2-3 Dec	Negotiating Group on Market Access
4-6 Dec	Trade Negotiations Committee
5-6 & 9 Dec	Council for Trade in Services

All WTO meeting take place in Geneva. Please contact the Secretariat for confirmation of dates (also available at <http://www.ictsd.org/cal/>).

### ACP-EU Events

27 September: Launching of ACP-EU Negotiations for New Economic Partnership Agreements - Brussels, Belgium

30 September-1 October: International Conference "Governance and Sustainability" - Berlin, Germany.

2-4 October: CDE Meeting with the Private Sector of the Pacific Region – Nadi, Fiji

3 October: DG Trade Meeting with Civil Society to Provide an Update on Agriculture Negotiations in the WTO and DSU – Brussels, Belgium

October / November: 1st Meeting of the ACP Ministers of Culture - Date and venue to be determined

18-19 October: Africa Regional Seminar on "Investment for Development" - Nairobi, Kenya organized by CUTS' Center for Trade Economics & Environment (CUTS-CITEE) and Eco News Africa (ENA) in collaboration with UNCTAD

24-25 October: Indian Ocean Commission (IOC) Workshop on Small Economies and EPA Negotiations - Mauritius.

4-8 November: EU-SADC Senior Officials and Ministerial Meeting - Copenhagen, Denmark

30 September–3 October: SADC Council and Heads of Government Meetings - Luanda Angola

18 November: DG Trade Meeting with Civil Society to Provide an Update on Agriculture Negotiations in the WTO Brussels, Belgium See [http://trade-info.cec.eu.int/civil\\_soc/intro1.php](http://trade-info.cec.eu.int/civil_soc/intro1.php) to register

18-19 November: EU General Affairs and External Relations Council - Brussels, Belgium with a development focus

22-28 November: EU-Africa Foreign Ministers Meeting, Burkina Faso

25 – 28 November: 5<sup>th</sup> session of the ACP-EU Joint Parliamentary Assembly – Brussels, Belgium

November: 76th Session of the ACP Council of Ministers – Brussels, Belgium

November/December: Seminars of the National and Regional Authorising Officers at regional levels – Venues to be determined

Contact ACP Secretariat, tel: (32 2) 743 06 00, fax: 735 55 73, e-mail: [info@acpsec.org](mailto:info@acpsec.org), Internet: <http://www.acpsec.org/>

## Resources

**Commerce international et développement durable: voix africaines et plurielles.** Published by the International Centre for Trade and Sustainable Development, August 2002. To order a copy, please contact Alice Chardonnes, [achardonnes@ictsd.ch](mailto:achardonnes@ictsd.ch).

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