



Trade Negotiations Insights

From Doha to Cotonou

February 2003

Vol. 2, Issue No.1

Beyond Lomé: Challenges and Prospects for ACP Countries

G. Anthony Hylton*

Lessons from Lomé

After 25 years of the Lomé Convention, analysts still debate the key lessons. Dominique David¹ highlights the “negotiated partnership” as one of the achievements. This, however, is debatable. Throughout the period of this relationship, various ACP countries have been subjected to sanctions in the form of denial of trading benefits and access to EDF funds, due to breaches of the Convention that were largely political in nature. It is noteworthy that no form of sanction has been levied on any country in the European Union for breaches of the Lomé Agreement. Despite the rhetoric of a partnership, the ACP-EU relationship has been largely about the perpetuation of a donor relationship.² The European Commission itself came to a similar conclusion.³

This donor relationship has not been a trivial one. During the 25 years of the Lomé Convention, approximately 40 billion Euros have been provided by Europe to ACP countries under the EDF arrangements. However, the recent American Farm Bill will provide US\$300 billion of subsidies to farmers annually. This financial assistance to one sector in one year is approximately 13 times the assistance provided to some 70 ACP countries over the 25 years duration of the Lomé Conventions. The point here is not to highlight the inadequacy of the financial package but rather to starkly put the magnitude of the challenge facing ACP countries.

The Lomé arrangements had two major flaws: First, they failed to take sufficient account of the institutional inadequacies and structural deficiencies of ACP countries that prevented optimal deployment of the EU financial assistance to support activities, regions and business communities that could

use those resources in the most profitable and creative way. Second, the arrangements also took inadequate account of the basic uncompetitive nature of traditional agricultural exports in ACP countries. Additionally, the existing trade regime penalizes value-added activities by imposing tariffs on finished products while granting duty-free access to primary agricultural products.

A major positive outcome of the Lomé experience, however, is the emergence and growth of ACP solidarity, rooted in the 1975 Georgetown Agreement.⁴

Contents

| | |
|--|---|
| Beyond Lomé: Challenges and Prospects for ACP Countries | 1 |
| EPA Negotiations Update: Overview of the Process and State of Play | 2 |
| Dispute Resolution Under the ACP-EU Cotonou Agreement | 5 |
| Calendar and Resources | 8 |

The Cotonou Agreement

After 18 months of intense negotiations, the Cotonou Agreement was signed. Paradoxically, the fact that an Agreement was finally reached underscores Europe’s his-

toric responsiveness to the legitimate concerns of ACP countries in their quest for sustainable development. The Agreement was intended to serve as a transitional arrangement along the journey from Lomé-type arrangements to a more reciprocal arrangement underpinning the integration of ACP economies into the global economy.

Challenges Facing ACP Countries

Perhaps the most important challenge facing ACP countries is that of embarking on a transformation process that enhances competitiveness and leads to improvements in social welfare. The process requires moving away from traditional structures that have contributed to perpetuating poverty, dependence and economic vulnerability while creating new structures and institutional arrangements that can enable global market penetration.

The initiation of WTO dispute settlement proceedings by Brazil and Australia is now of major concern. Challenges to certain elements of the sugar regime under which the Sugar Protocol, the Special Preferential Sugar (SPS) arrangement and the Everything-But-Arms Initiative are implemented will,

if upheld, undermine vital trade interests as well as the transitional process of the affected ACP States.

Another challenge facing ACP states is EU enlargement.⁵ The main concern is the possible negative impact on development cooperation due to the absence of any tradition of providing development aid and establishing development cooperation policy.⁶ These financial concerns distract ACP States from recognizing the opportunities that enlargement could bring in the form of new markets. A fundamental concern, however, is the longer-term implications of an enlarged EU of new entrants without the shared colonial experiences. The question arises: Will development cooperation exist beyond Cotonou?

One threat to ACP unity is presented by the EU proposal for Regional Economic Partnership Agreements (REPAs) with all the internal inconsistencies of the proposal. For example, differentiated treatment of ACP states within defined regional arrangements remains problematic. This, of course, does not obviate the necessity to take full account of national and regional needs. However, instruments do exist under the current ACP-EU arrangements for taking account of these needs.⁷ This leads ineluctably to the conclusion that the EU proposal for REPAs is a negotiating ploy intent on undermining ACP solidarity. The EU objective here is simply to ensure maximum market openings in ACP states and regions for its goods and services, by virtue of the reduced capacity to negotiate of a fragmented ACP group.⁸ The EU's insistence on negotiating only in one Phase, rather than the two-Phases, proposed by ACP states is instructive. So too the recent South African experience in negotiating a similar economic partnership arrangement with the EU.⁹

The quest for ACP unity should not simply be seen as an end in itself but rather as a means to protect and advance vital ACP interests not only in negotiations with the EU, but also in the WTO and beyond. Another challenge relates to the deepening of our democracy. The process will require transforming the structure of government to a more decentralized structure that can stimulate increased civil society involvement in decision-making. This will provide the institutional foundations for unleashing the enormous creative energies of our peoples. These creative energies are now vital for ensuring international competitiveness.

The Way Forward

First, as we venture outside the Lomé framework, it is imperative that we reorient our minds to deal with the possible benefits and certain burdens of reciprocity. We must confront the psychological shift necessary to make the transformation from preferential arrangements to reciprocal arrangements. Simply put, psychological dependency fostered by old colonial relations must now give way to new expressions of

Continued on page 7

EPA Negotiations Update: Overview of the process and state of play*

Sanoussi Bilal and Melissa Julian - ECDPM

On 27 September 2002, the ACP and the EU officially launched the negotiations on Economic Partnership Agreements (EPAs). After almost three decades of non-reciprocal preferential access to the EU market, EPAs are meant to replace the existing trade regime by reciprocal agreements that are fully WTO-compatible, while providing for differential and asymmetric treatment.

The Objectives of EPAs

The EPAs, as proposed by the European Commission, should be essentially enhanced, development-oriented free trade areas (FTAs) between ACP (regional) groupings and the EU. They should cover trade in goods, agricultural products and services, and should address tariff, non-tariff and technical barriers to trade, as well as trade-related areas. These could include issues such as investment, competition, protection of intellectual property rights, standardisation and certification, sanitary and phytosanitary (SPS) measures, trade and environment, trade and labour standards, consumer policy regulation and consumer health protection, food security, public procurement, and sectors such as fishery.

With the objectives of fostering sustainable development, integrating the ACP into the world economy and fully complying with WTO rules, the basic guiding principles of EPAs are to build on and reinforce the regional integration process of the ACP and provide for appropriate differentiation and asymmetry to take account of the level of development and the socio-economic impact of EPAs on ACP countries.

A Two-Phased Negotiation Process

Phase I: A Pan-ACP round

The EPA negotiations are structured around two phases, which could overlap. The first phase of the negotiations, which started on 27 September 2002 and will extend until September 2003, takes place between the European Commission and the ACP Group as a whole. The objectives are to define the format, structure and principles for the negotiations.

Whereas the precise content of negotiations in the first phase still has to be decided upon, they will address issues that are of common interests to the ACP. To prepare themselves, the ACP will address these issues in 6 working

groups relating to: market access, services, agriculture, trade-related issues, development co-operation and legal issues. The European Commission also proposed an additional theme referred to as 'tool box', intended to address some crosscutting issues relating to the regional integration 'tools' required in the ACP. The European Commission will have only one 'group' for its preparations and DG Trade will provide the spokespersons.

For the European Commission, the first phase should not have a binding outcome, while some of the ACP want to conclude a formal all-ACP-EU agreement at the end of this first phase. The structure agreed upon for the first phase of the negotiations corresponds to the internal decision-making mechanism of the two parties.

The ACP side

On the ACP side, the ACP Council of Ministers assumes the political leadership of the negotiations, being responsible both for the conduct and approval of the negotiations. The ACP Council will be supported in its tasks by the ACP Ministerial Trade Committee. The effective conduct of the negotiations will take place at two different levels. The substantive political negotiations on each specific group of subjects will be conducted by Ministerial spokespersons from the ACP. The preparatory negotiations will take place at the Ambassadorial level 'in close collaboration with ACP-European-based Ambassadors responsible for the WTO'.¹

The ACP Committee of Ambassadors, and its spokespersons, should therefore seek greater coherence, at the ACP level, between the EPA and WTO negotiations. To this end, a consultation and coordination mechanism between ACP Ambassadors based in Brussels and in Geneva is being put in place. In parallel, a similar ambassadorial framework is due to be set between the ACP and the EU, with the establishment of a Joint ACP-EU Steering Committee.²

The technical preparatory work for the negotiations is conducted through a coordinating group, supported by specific technical groups. The ACP Secretariat, under the supervision of the Committee of Ambassadors, has to undertake the technical preparations for the negotiations, with the assistance of the Advisory Group of High-Level Trade Experts, experts representing the regional economic integration organisations and officials of collaborating Institutions.

The EU side

On the EU side, the European Commission has received the mandate from the European Council to negotiate EPAs

with the ACP. In practice, DG Trade will conduct the EPAs negotiations, in coordination with DG Development, DG Agriculture and DG Enterprises and Information Society. The Commission will cover all technical, ambassadorial and ministerial levels of the negotiations. The EU member states will provide guidance to the negotiations through the Article 133 Committee and the Council Development Working Group. The European Commission will regularly report to these working groups, as well as to the EU General Affairs and External Relations Council. The European Parliament and the ACP-EU Joint Parliamentary Assembly will be consulted during these negotiations.

Phase II: Negotiating regional EPAs

The more substantive trade negotiations will be left for the second phase, due to start no later than September 2003, with a certain degree of flexibility allowing for the overlapping of the two phases.

EPA negotiations are most likely to take place within the framework of the regional ACP groupings in a position to do so. Beyond the geographical configuration and the structuring of these negotiations, a whole series of challenges remain in terms of preparing the countries and regions for this phase. It was also agreed to maintain of an all-ACP coordination mechanism during the entire process of the negotiations so as to ensure *inter alia* the reviews of the negotiations.

State of Play of the Negotiations

The EPA negotiations have started slowly. The first ACP-EU Ambassadorial level meeting on EPAs, held on 30 October 2002, focused on the format, structure and principles for the negotiations. These issues were further addressed during the second joint Ambassadorial meeting on 9 December 2002.

The ACP and EU positions continue to diverge with regard to:

- the inclusion of discussions on a general framework agreements as one of the six themes of negotiations, to be addressed together with agriculture for the ACP, or simply under the market access group for the European Commission;
- whether, as advocated by the ACP side, there should be a formal agreement at the end of Phase I and who would be the signatories;
- the signatory framework for the conclusion of EPAs at the end of the second phase (individually by member states or under an (ACP) umbrella agreement);
- the need for and availability of additional funds beyond the amounts of the 9th European Development Funds (EDF);

-and the need for a Joint ACP-EC Steering Committee on WTO negotiations.

The 3rd Joint Ambassadorial meeting on EPAs was to have been held on 28 January 2003, but was postponed at the ACP's request to allow more time for their preparations. A new date has not yet been set. Although the EPA negotiations have so far mainly focused on procedural matters, ACP negotiation groups have been constituted and are starting to meet to prepare technical inputs for the negotiations (see Box 1). Each ACP negotiation group will comprise 15 members: two representatives of each of the six sub-regions plus three Troika members. In order to support each ACP country in conducting studies on the potential impact of an EPA, the ACP have agreed on common terms of reference for *National Sustainability Assessment of Economic Partnership Agreement*.

Regional level preparations also continue. Several regions (Pacific, SADC, UEMOA) have already concluded regional preliminary impact assessments studies, while other are in the process of conducting such studies. Experts meetings, trainings, workshops, specific studies and other initiatives to prepare for the negotiations are also taking place at regional level. The Programme Management Unit of the 20 million euro capacity building for EPA negotiations programme has already been providing support to several projects. It has also organised a meeting, on 3-5 February 2003, designed to help preparing Brussels based ACP Ambassadors and diplomats with some of the tools for negotiating EPAs. The ACP have also adopted a for-

FURTHER READINGS

* For an extended discussion of some of the main issues, timeline and structures of the EPA negotiations, see San Bilal and Kathleen Van Hove, "An Overview of the ACP-EU Negotiations: Issues and Timeframe", paper presented at the CTA International Seminar, Brussels, 27-29

mal public relations strategy. The operationalisation of the strategy is under discussion. On the European Commission side, several papers have been put forward for discussion, including on: market access, procedures, 'tool-box' and rules-related issues. Major initiatives include the start of sustainability impact assessment studies on EPAs, to be carried in consultation with ACP stakeholders.

The way forward

The 4th Ambassadorial negotiating meeting is scheduled for February 24. The next major upcoming meeting will be the 4th Joint ACP-EC Ministerial Trade Committee (JMTC), to be held on 28 February 2003 in St. Lucia. On the 14-15 April, the EU General Affairs Council will hold a debate on EU-ACP relations, in preparation of the EU-ACP Council of Ministers of 16 May 2003. Under the present circumstances, and in the absence of any serious new impetus in the negotiations, the lack of progress in the negotiations on substantive issues could compromise the next JMTC. More importantly, it could deprive the first phase of the negotiations of any major substance, content-wise. Of the progress made during the first phase of the negotiations, and its outcomes, will depend not only the nature of the second phase of the negotiations and ultimately the format of EPAs, but also the ability the ACP group to address issues of common interests and to preserve the ACP cohesion.

ENDNOTES

¹ See Decision No.1/02 of the Special Session of the ACP Council of Ministers held in Brussels on the 25th and 26th September 2002 on the Structure for the Negotiation of the Economic Partnership Agreements (EPAs) for the All-ACP Phase, <http://www.acpsec.org/gb/council/sept02/dr0702e.htm>

² See Decision No. 3/02 on Negotiations Under the WTO-Doha Development Agenda: <http://www.acpsec.org/gb/council/sept02/dr0702e.htm> and ACP General Secretariat Press release on the First negotiations meeting on the ACP-EU Economic partnership agreements at ambassadorial level, Brussels, 30 October 2002, <http://www.acpsec.org/gb/press/30oct02e.htm>

Box 1: ACP negotiation groups at Ministerial and Ambassadorial levels

| | Market Access | Agriculture & Fisheries | Trade in Services | Development Co-operation | Trade Issues | Legal Issues |
|-------------------------------|----------------|-------------------------|-------------------|--------------------------|----------------|-----------------|
| Ministerial Lead Spokesperson | Kenya | Lesotho | Barbados | Niger | Tonga | Uganda |
| Ministerial Alternates | Uganda | Central Africa | West Africa | Ethiopia | Caribbean | Pacific |
| Ministerial Alternates | Central Africa | Pacific | Central Africa | Caribbean | West Africa | Southern Africa |
| Ambasad. Lead Spokesperson | Niger | Mautitius | Fiji | Central Africa | Malawi | Haiti |
| Ambassadorial Alternates | Pacific | Guyana | Southern Africa | Pacific | Sudan | Central Africa |
| Ambassadorial Alternates | ECS | | Ethiopia | Southern Africa | Central Africa | West Africa |

Dispute Resolution Under the ACP-EU Cotonou Agreement: A Need for Reform?

Victor Mosoti* - ICTSD

The *Cotonou Agreement* dispute settlement procedures have, like most provisions for dispute settlement at the international level, with the notable exception of those in the WTO, been hardly utilized. In fact, the first and only country to have invoked the procedures is Zimbabwe. Granted, the very nature of the relationship between the African Caribbean and Pacific (ACP) countries on the one hand, and the European Union (EU) on the other, is a friendly and diplomatic one, bordering on the paternalistic.

Consequently, the space for belligerent litigation is severely, and safely, limited. However, with the evolution of the relationship into Economic Partnership Agreements (EPAs), and thereby the centrality of purely commercial concerns and relationships, and *a fortiori*, for the fact that the EPAs have to be WTO compatible, it is easy to foresee a greater incidence of conflict over interpretations of certain provisions of the *Cotonou Agreement* or the EPAs, or even differences over commitments made by either party.

A strong case can therefore be made for a revision and strengthening of the rather undeveloped dispute settlement procedures presently embodied in the *Cotonou Agreement*. It is understandable that the tenor of negotiations presently, is such that a revision of the Cotonou Agreement is unlikely, and bound to be politically 'messy'. Evidently however, since the EPAs will be individually negotiated on a regional basis, there is a definite need to embody dispute settlement procedures in all of the negotiated EPAs. It should be clear that such EPA-specific dispute settlement procedures would not apply at an all-ACP level and may very well vary, depending on regional specificities and preferences. However, it would be most useful if they were in fact substantially similar, if for nothing else, the opportunity to share best practices and the need for establishing and adhering to basic uniform international standards.

In establishing the existing dispute settlement procedures, the objective of the parties to the *Cotonou Agreement* was to come up with a fair, simple, transparent and cost effective dispute settlement process. This desire for simplicity and cost-effectiveness led the parties to negotiate and agree to the provisions at Article 98 of the *Cotonou Agreement*. No detailed procedures are spelt out. Article 98.1 states simply that "Any dispute arising from the interpretation or application of this Agreement between one or more Member States or the Community, on the one hand, and one or more ACP States on the other, shall be submitted to the Council of Ministers." Of course the Council of Ministers

cannot meet as frequently as a dispute arises, and one may well suppose a situation where four or five disputes may arise in quick succession. To the extent that the dispute settlement process is implicitly tied to the calendar of the Council of Ministers, the procedures would appear to have the potential to be unnecessarily slow, and insensitive to the economic loss that a party may suffer as a result of an incompatible measure. For practical reasons, a strong case for a standing body for dispute settlement can be made. Ideally, this would have to be effected through an amendment to the agreement. There exists a chance to put in place better dispute settlement procedures in each individual EPA, as negotiated. Any disputes arising on either side in the implementation of the EPAs shall then be resolved through such procedures. Art XXII and XXIII of GATT 94 and the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU) in the WTO could provide vital guidance on the kind of structures that could be put in place to deal with disputes under the *Cotonou Agreement* and the EPAs.

Just like in the WTO, the relationship between the ACP countries and their other developed trading partners, is imbalanced and is, from the outset, skewed to the disfavor of the ACP countries. This is a function of many factors, among them; global power asymmetries; a long period of marginalization from the global trade policy-making process; insufficient skilled human resources both to identify GATT-inconsistent practices by other trading partners and to effectively engage the system in resolving such disputes. Consequently, no Least Developed Country WTO member has ever taken part as a principal party in any WTO dispute.

In the ACP Group, only a handful of countries have had exposure to the system, mostly as third parties, and with often-minimal benefit. Under the Cotonou Agreement, the attempt to settle disputes through consultations is an important, and desired component. This should be maintained in the individual EPAs as it is not costly, and often, is the surest way to maintain a modicum of diplomatic goodwill between unequal trading partners. The only ACP country that has invoked the dispute settlement procedures of the Cotonou Agreement was Zimbabwe with regard to EU mandated sanctions, and that the sanctions were imposed prematurely. Curiously enough, the crux of Zimbabwe's argument rested on its view that the preference for political dialogue should have preceded formal consultations in the dispute. According to Zimbabwe, the EU should not have proceeded to consultations with it under Article 96 of the *Agreement* since it was already engaged in political dialogue with her under Article 8 which requires that "parties shall regularly engage in a comprehensive, balanced and deep political dialogue leading to commitments on both sides."

It would appear that the Committee of ACP-EU Ambassadors could be a beginning point as a model in considering the reform of the dispute resolution procedures under the Cotonou

Agreement. However, there is need to develop sustained focus on legal interpretations, and to build a *corps* of professionals that can be relied upon to steer the agreements along the way with the expected misunderstandings in international commercial relationships. In the long run, this might be the more affordable and reliable option, rather than *ad hoc* sessions of Ministers or Ambassadors without continuity, and without continued legal analysis.

The standing dispute settlement body need not be overly elaborate. A small joint office, between the ACP and the EC, with some staff forwarded from the legal offices of both parties could serve a coordinating role. At most, three judicial officers from each of the EPA regions could be selected onto a roster to serve as panelists in any dispute arising and specific to each EPA, quite possibly, from professionals that have had experience either at the Permanent Court of Arbitration or in the WTO legal system. The consequence will be an interesting combination of 3 or 4 permanent legal secretariat staff who can offer initial legal advice, and conduct preliminary legal screening of the cases and a group of panelists, that will be called upon to render a judicial opinion, on the aggregate, should the parties proceed forward to demand such a determination. The secretariat could also serve as the nerve center to facilitate arbitration, which should remain as the preferred mode of resolution, as the custodian of procedures of dispute resolution, and as a depository for decisions that could guide future determinations and arbitrations.

Article 98.2(a) goes on to provide that “If the Council of Ministers does not succeed in settling the dispute, either Party may request settlement of the dispute by arbitration. To this end, each Party shall appoint an arbitrator within thirty days of the request for arbitration. In the event of failure to do so, either Party may ask the Secretary-General of the Permanent Court of Arbitration to appoint the second arbitrator.” Article 98.2 (b) provides “The two arbitrators shall in turn appoint a third arbitrator within thirty days. In the event of failure to do so, either Party may ask the Secretary-General of the Permanent Court of Arbitration to appoint the third arbitrator.” Article 98.2 (c) states “Unless the arbitrators decide otherwise, the procedure applied shall be that laid down in the optional arbitration regulation of the Permanent Court of Arbitration for International Organizations and States. The arbitrators’ decisions shall be taken by majority vote within three months.”

The reference to and use of the Permanent Court of Arbitration makes these procedures rather unwieldy. It would be easy to provide an internal system that is trim and efficient, and that can have the chance to build internal and Cotonou-specific competencies. Whereas the Permanent Court of Arbitration is a respected and widely used institution in matters of commercial arbitration, the special nature of the ACP-EU relationship, and the special interests of parties demand a dispute resolution system that is tailored to their interests

and competencies, much like the WTO dispute settlement system. If the *EU - Chile Free Trade Agreement* is anything to go by however, the EU’s is likely to maintain that consultations and (failure of which,) arbitration should be the choice method for dispute resolution under each of the negotiated EPAs. According to Article 183 thereof, “Parties shall at all times endeavor to agree on the interpretation and application of this Part of the Agreement and shall make every attempt through cooperation and consultations to avoid and settle disputes between them and to arrive at a mutually satisfactory resolution of any matter that might affect its operation” (emphasis added).

This emphasis on consultations is beneficial in circumstances of extreme inequality amongst parties exist, such as is the case in the ACP-EU relationship, and could be an approach that ACP countries may want to explore in individual EPAs. In the *EU - Chile FTA*, the parties agreed to a two-step process to dispute settlement. The first and overly emphasized step is to engage in consultations with the view of a mutually agreed solution (described as dispute avoidance in *the Agreement*). In the consultations phase, the parties refer the dispute to the Association Committee, which comprises senior government officials from Chile and the EU. The Association Committee is mandated to render a decision specifying “the implementing measures to be taken by the Party concerned, and the timeframe for doing so” (Article 183).

The transition to an arbitration panel, is rather (too) quick, hence the provision that “Where a Party considers that an existing measure of the other Party is in breach of an obligation under the provisions referred to in Article 182 and such matter has not been resolved within 15 days after the Association Committee has convened pursuant to Article 183(3) or 45 days after the delivery of the request for consultations within the Association Committee, whichever is earlier, it may request in writing the establishment of an arbitration panel.” The arbitrators are to be chosen from a roster (which harkens back to WTO practice) of 15, which is selected and maintained by the Association Committee. The arbitrators have to come up with a *final* ruling within three months from the date of their selection, and in any event no later than five months from such date.

There is also the notable possibility of challenging the jurisdiction of a panel under Article 194 (4)(d) Unlike in the WTO where a panel has compulsory jurisdiction (of course preceded by the usual difficulties in choosing panelists that meet the favor of both parties), the possibility to challenge the jurisdiction of a panel under the EU-Chile FTA seems like innovative, yet one that may drag out the arbitration process, since the grounds for challenging such jurisdiction seem to be open-ended. Like in the WTO, the panels have standard terms of reference “unless the parties otherwise agree” (*Model Rules of Procedure for the Conduct of Arbitration Panels*, Article 9(a) Annex XV) and not surprisingly, have the leeway to

accept *amicus curiae* briefs, if the parties do not object. This has been controversial in the on-going negotiations on DSU Review at the WTO, with an evident disconnect between developing and developed countries. Developing countries have contended that unsolicited *amicus curiae* briefs, will inevitably come from powerful interest groups and non-governmental organizations in the developed world, which may tilt the balance to their disfavor all the more. Developed countries insist on it as part of the transparency and public-participation objectives that they wish to see included in WTO processes. It looks like the intermediate might be to come up with very clear rules and conditions for the admission of such briefs, something which the *EU-Chile FTA* has already admirably done, by limiting each brief to 15 pages, and conditioning its acceptance to the willingness of both parties.

Overall, the dispute resolution procedures under the *EU-Chile FTA* seem like a simplified and deliberately less legalistic version of the WTO procedures. The use of binding arbitration, as opposed to a binding litigation outcome in the WTO reflects the desire to maintain cordial, less confrontational commercial relationships even beyond the dispute itself. This is important also, because in a system that lacks meaningful enforcement mechanisms (largely based on goodwill and the need to make the relationship work), the need to maintain cordial trade relationships is important to ensure the implementation of arbitration rulings. The *EU-Chile FTA* dispute settlement model seems simple and workable, but needs institutionalization as suggested before. There is hence a demonstrable and urgent need for more specific work in this regard, and Phase I of the negotiations is a perfect opportunity to raise these issues.

* Victor Mosoti is the Coordinator, for African and Legal Affairs, ICTSD.

Continued from page 2

self-reliance that can engender sustainable development. Of course, "sustainable development" is not a mantra to be evoked but must be the outcome of deliberate policy actions. Second, arguably the most urgent of the actions needed is rethinking trade policies across ACP states to ensure the achievement of sustained developmental objectives. Influenced, as they were by non-reciprocal trade preferences most ACP countries failed to increase their market share and to achieve competitiveness and diversification in their product offerings or to attract foreign direct investment.

Now faced with the challenges of reciprocal trade and a highly intrusive set of WTO rules affecting domestic policy environment, ACP states must now rethink the policies needed to deliver the elusive "sustainable development." Third, ACP unity should be maintained by assembling All-ACP negotiating teams across negotiating areas and across regions to ensure that the limited technical capacity within

ACP is fully deployed to meet the challenges posed by well-resourced and highly skilled EU negotiating teams backed up by powerful institutions. Fourth, yet another way of safeguarding ACP unity is by insisting that the regional agreements, though separately negotiated, must all constitute a single undertaking with the EU. ACP states will do well to remember the "Humpty Dumpty Principle" of unity which holds that once the unity is broken it will never be put back together again. In the context of the ACP-EU cooperation, any lack of solidarity in negotiating post-Lomé arrangements on trade issues will undermine ACP solidarity in the political dialogue with the EU and in other areas of ACP-EU cooperation in the WTO and beyond. Lastly, a word of advice to ACP negotiators! My own negotiating experience with the EU teaches that it is imperative to dot all "i"s and cross all "t"s. Specifically, initial every page of draft final documents negotiated with the EU. Attention must be paid to details in these negotiations. This point cannot be over-emphasized.

ENDNOTES

¹ See, Dominique David, *40 Years of Europe-ACP Relationship*, The Courier, Special Issue, Cotonou Agreement, September 2000.

² This donor relationship is rooted in the Community development aid policy of the Overseas Countries and Territories since 1957.

³ European 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*. Brussels: European Commission, Chp.2.

⁴ See Articles 2(d), (e) and (f) of the Georgetown Agreement (1975).

⁵ The EU will be enlarged from 15 member states to 25 by 2004.

⁶ Among the proposed new entrants, Estonia provides the most public development aid, devoting barely 1% GNP, compared to an EU average of about 3%.

⁷ Namely, the National Indicative Programme (NIP) and the Regional Indicative Programme (RIP).

⁸ For support of this view see European Commission (1996:2) *Green Paper* (op.cit.)

⁹ The relevant lessons for the ACP of the South African experience is the fact that a well-resourced, well-organized, well-prepared South African team proved to be inadequate in protecting and advancing their vital economic interests in the negotiations with highly skilled and well-resourced EU negotiators supported by powerful European institutions.

* This article is a revised and abridged version of a speech given at the CTA seminar *Meeting the Challenge of Effective ACP Participation in Agricultural Negotiations*, Brussels, 27-29 November 2002.

* G. Anthony Hylton is Ambassador/Special Envoy Jamaica

TNI Editorial Team:

Christophe Bellmann - ICTSD

Victor Mosoti - ICTSD

Sanoussi Bilal: ECDPM - ODI

International Centre for Trade and Sustainable Development

Tel : + 41 22 917 84 92

E-mail : cbellmann@ictsd.ch

Web : www.ictsd.org

European Centre for Development Policy Management

Tel: + 31 43 350 29 00

E-mail: tni@ecdpm.org

Web: www.ecdpm.org

Overseas Development Institute

Tel: + 44 20 7922 0300

E-mail: tni@ecdpm.org

This bi-monthly publication is made possible through the financial contribution of the Government of the United Kingdom (DFID) and the Swiss Development Cooperation (SDC).

Trade Negotiations Insight© ISSN 1682-6744

Calendar

WTO Events

ACP-EU Events

| | |
|------------------|--|
| 27 February | Committee on Budget, Finance and Administration |
| 27 February | Committee on Customs Valuation |
| 28 February | Council for Trade in Services |
| 28 February | Special Session of the Committee on Agriculture |
| 3 March | Special Session of the Council for Trade in Services |
| 7 March | Committee on Trade and Development |
| 10 March | Committee on Trade and Development |
| 10 March | Committee on Trade and Development on Small Economies |
| 18 March | Workshop on Technical Barriers to Trade |
| 24-25 March | Special Session of the Committee on Agriculture |
| 26 March | Committee on Market Access |
| 27 March | Committee on Agriculture |
| 28 March | Special Session of the Committee on Agriculture |
| 31 March | Special Session of the Committee on Agriculture |
| 31 March-1 April | Working Group on the relationship between Trade and Investment |
| 2 April | Trade Policy Review Body - Burundi |
| 3-4 April | Committee on Regional Trade Agreements |
| 3-4 April | Committee on Trade-Related Investment Measures |
| 4 April | Trade Policy Review Body - Burundi |
| 8-9 April | Trade Negotiations Committee |
| 14-15 April | Negotiating Group on Market Access |
| 23 April | Trade Policy Review Body - Southern African Customs Union (SACU) |
| 24-25 April | Special Session of the Council for Trade-Related Aspects of Intellectual Property Rights |
| 25 April | Trade Policy Review Body - Southern African Customs Union (SACU) |
| 28 April | Sub-Committee on Least-Developed Countries |
| 29-30 April | Committee on Trade and Environment |

| | |
|--------------------|--|
| 27-28 Feb. | 9 th meeting of the ACP Ministerial Trade Committee - St. Lucia, Castries |
| 1 March | 4 th meeting of the ACP-EU Ministerial Trade Committee - St. Lucia, Castries |
| June | 1 st Meeting of ACP Ministers of Culture - Dakar, Senegal - date to be determined |
| 29-30 March | Meeting of ACP Members of the Joint Parliamentary Assembly - Brazzaville, Congo |
| 30 March - 4 April | 5 th session of the ACP-EU Joint Parliamentary Assembly - Brazzaville, Congo |
| 11 April | ACP-EC Committee of Ambassadors |
| April | 2 nd ACP-EU Ministerial session on the negotiation of EPAs - date to be determined |
| 10-11 May | Meeting of the NAOs and RAOs |
| 12 May | Ministerial Committees : Trade, Sugar, Banana and Development Finance Cooperation |
| 12 May | 10 th meeting of the ACP Ministerial Trade Committee and 5 th meeting of the ACP-EU JMTC |
| 13 May | Bureau of the ACP Council of Ministers |
| 14-15 May | 77 th session of the ACP Council of Ministers |
| 15-16 May | 28 th session of the ACP-EC Council of Ministers |

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

Resources

EPAwatch. This website is an instrument to monitor the trade negotiations between the European Union and the ACP countries with the aim of establishing Economic Partnership Agreements (EPAs). <http://www.epawatch.net/general/start.php>.

Commerce, Propriete Intellectuelle & Dveloppement Durable de l'Afrique, Sous la direction de: Ricardo Melendez Ortiz, Christophe Bellmann, Anne Chetaille, Toufik Ben Abdalla. Published by ICTSD, Solgral and ENDA. Novembre 2002.

The Perversity of Preferences - GSP & Developing Country Trade Policies, 1976-2000. By Caglar Ozden and Eric Reinhardt. World Bank International Economics Working Papers (November 2002). To access the paper, visit: http://econ.worldbank.org/files/23188_wps2955.pdf.

IPC Recommendations for the Agricultural Modalities on the Doha Round. The International Food and Agricultural Trade Policy Council (IPC), 21 January 2003.

Do we really know that the WTO Increases Trade? Rose, Andrew. September 2002. CEPR Discussion Paper No. 3538. Centre for Economic Policy Research. London

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