



Cotonou Infokit

ACP-EU trade negotiations after Cotonou

The Cotonou agreement extends trade preferences for eight years and defines the negotiating framework to enable ACP and the EU to conclude new trade agreements compatible with WTO rules, by 31st of December 2007 at the latest.

The Negotiating Calendar: 2000-2020

The Cotonou text is not a trade agreement, but 'a commitment to agree' at a later date (2008 at the latest) on several new ACP-EU reciprocal trade agreements that are compatible with WTO rules and will replace the present non-reciprocal preferential arrangement. For the first time, ACP countries will negotiate a trade agreement with the EU (so far, only preferences have been granted). The calendar for this process is detailed on the next page. Confronted with this new situation, ACP countries will have to answer several questions: How will they negotiate and with whom? What goals should they pursue? What room for manoeuvre do WTO rules leave them?

How to Negotiate? Difficult Choices for ACP

Negotiate alone, or with several others? ACP countries can negotiate Economic Partnership Agreements (EPAs) collectively in regional groups, such as UEMOA, CARICOM, or SADC. While this is the EU's preferred option, they can also negotiate individually. To negotiate an EPA as a regional grouping would involve a prior negotiation between member states to decide on a common negotiating mandate and probably to delegate the power to negotiate with the

Commission to a supranational entity. Certain non-LDCs could distrust such a mechanism and may feel that they would be better able to defend their interests on their own. It remains to be seen whether the EC will want, or be able to negotiate a series of 'individual' EPAs.

Negotiate collectively but with whom? Many ACP countries (most of them in Africa) simultaneously belong to several regions, but will only be able to negotiate a regional EPA - if they so wish - within the framework of a single region. For example all countries belonging to UEMOA are also members of ECOWAS. Several countries are members of both SADC and COMESA. A choice will have to be made, and some options excluded.

Negotiate...or not? For LDCs such as Mali, Haiti or Zambia, the existing preferences can be extended. They must therefore decide whether to negotiate the opening of their frontiers to European products or instead to not negotiate at all, retaining the advantage of present preferences. From a purely mercantile point of view, since reciprocity does not offer any real prospect of gaining further access to the EU market, they will have little incentive to join the negotiations of an EPA.

Non-LDCs, such as Zimbabwe could also choose not to negotiate, if for example the revision of the EU GSP offered to them is equivalent to the benefits through the Lomé/Cotonou Agreement. However, the revised GSP will only be known two years after the start of the ACP-EU negotiations. It is therefore probable that several non-LDCs will join negotiations on EPAs, so as not to be 'downgraded' under the present GSP. Since all ACP regions contain LDCs and non-LDCs, to obtain a consensus between member countries on a regional negotiating strategy promises to be tricky.

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An EPA or Nothing?

Are non-LDCs that do not wish to sign an EPA condemned to enter the GSP? The question is crucial. At the insistence of ACP countries, the Cotonou Agreement foresees the possibility of 'alternatives' permitting them to retain an equivalent access to the present regime (Article 37.6 - see box). The Commission is however extremely reluctant to pursue alternative trade agreements (other than the EPA) and the article stipulates that it is the 'Community' which will "study" these alternatives. It therefore does not explicitly foresee a negotiation and it can be interpreted as leaving full discretion to the Commission to accept or refuse this alternative option. Moreover, on a technical level, it is difficult to imagine an alternative that would be compatible with WTO rules, apart from a non-reciprocal system extended to all developing countries, such as an improved GSP.

Towards a Positive Negotiating Agenda

The ACP could hope to go beyond the provisions of the Cotonou Agreement - which is rather vague and generally not very innovative on trade issues - and strengthen cooperation with the EU in new domains where this can be useful at a 'sub-multilateral' level. Examples are cooperation in the area of services, criteria to protect intellectual property

on plants, codes of conduct on anti-dumping, safeguard measures etc. This would require that the ACP countries, as soon as possible, identify their long-term trade interests and develop suitable negotiating strategies. Certain countries such as in the Caribbean region seem to be taking this route.

The Multilateral Negotiating Framework

In their negotiations, the ACP and the EU must take account of the multilateral rules about bilateral agreements, and the attitude of other WTO members. This creates a double uncertainty. First, in the short term, it is not certain that the EU will obtain from WTO members a waiver (see infokit 13) to maintain the preferential regime until 2008. Certain Latin American countries are already opposed to this as a way to exert pressure on Europe to modify its banana regime.

In the longer term, if the EU obtained this derogation, the agreements themselves could be denounced. The 'free trade' agreement and customs unions are distortions of the non-discrimination principle of Article I of GATT (now superseded by the 1994 WTO agreements). This stipulates that any advantage conferred on a third country in terms of market access must be automatically extended to all members of the multilateral system, according to the Most Favoured Nation clause. GATT however recognises that under certain

Date	Negotiations	Trade regime
Until September 2002 Spring 2000	Preparation of negotiations. EU requests a derogation from other WTO members enabling it to maintain Lomé trade preferences until 2008 (decision still awaiting)	Maintainance with 76 ACP countries, except South Africa, of non-reciprocal tariff preferences in force at present, i.e. the Lomé regime for all ACP countries <i>(assuming a derogation is obtained from WTO)</i>
From September 2002 to 31 December 2007 2004 2006	EU negotiates 'Economic Partnership Agreements' with ACP countries, by regional groups, or country by country. EU and ACP countries study 'all possible alternatives' for non-LDC countries which 'decide [...] that they are not able' to sign free trade agreements. EU revises its GSP EU and ACP countries analyse agreements foreseen 'to ensure that the calendar foreseen permits the adequate preparation of negotiations.'	
From 1st January 2008 until 2018-2020	Application of new Economic Partnership Agreements (EPA).	
From 2018-2020		End of the global 'all ACP' Lomé regime. ACP signatories of EPAs progressively open their markets to EU products. LDCs which have chosen not to conclude EPAs retain their non-reciprocal tariff preferences. non-LDCs which have chosen not to conclude EPA's benefit from a new regime (still to be defined). Application of free trade agreements between the EU and ACP countries signatories of EPAs

'Alternatives' to EPAs Cotonou - Article 37.6

In 2004, the Community will assess the situation of the non-LDCs which, after consultations with the Community decide that they are not in a position to enter into Economic Partnership Agreements and will examine all alternative possibilities, in order to provide these countries with a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules.

conditions, "regional" agreements that aim to lower trade barriers between a limited number of members can be complementary to the multilateral liberalisation process. They are thus authorised, subject to a triple condition that is set out in Article XXIV of GATT, which regulates regional agreements:

They must not involve an increase in the level of overall protection against third countries;

They must cover virtually all trade (do not exclude too many 'sensitive' products);

They must be established within a reasonable period of time (which the WTO agreements interpret as not exceeding 'ten years except in exceptional circumstances').

Do EPAs fulfil these conditions? It is not possible to say. First because we will not know until 2008 which products will be excluded from the agreements and in what period of time the agreement will be put in place. Furthermore, the provisions of Article XXIV are far too vague to indicate clearly what is 'compatible' and what is not. Very few agreements have been notified to the regional agreements committee of the WTO so far, and none has so far been challenged. Everything in fact depends on what WTO members are prepared to accept from their partners. This decision can be strongly influenced by trade or political factors that have no direct relation to the regional agreements concerned, as in the case of bananas and the derogation requested for the Cotonou agreement by the EU.

A Negotiation Unlike Others

The ACP countries are thus faced for the first time with a trade negotiation with the EU. However, it is a special kind of negotiation:

Does Article XXIV restrict EPA benefits for the ACP?

Wishing to soften the shock of eventual free trade agreements on ACP economies (increased competition, decline in customs revenues etc), certain people have suggested that WTO rules - in particular the provisions of Article XXIV - should be made more flexible. They argue that this would enable the establishment of 'softened' free trade areas which would exclude 'sensitive' products up to a proportion of 20 % of trade, or more, and with a 15 or even 20 year transition period. Is this in the interest of ACP? To respond, the spirit of Article XXIV should be recalled.

Article XXIV is WTO's tool to unmask 'marriages of convenience.' The restrictions it imposes on the application of regional agreements are supposed to ensure that they are not used as instruments of everyday trade policy but that they reflect a strong political will for integration on the part of the contracting parties (as in the case of the EU itself). Indeed, an FTA which would exclude a large number of economic sectors, and which, by means of a very long transitional period, would allow tariff cuts to be postponed to the far future would have several disadvantages.

First, to exclude many products from liberalisation reduces the economic restructuring impact of the imports, which is the main effect expected from trade liberalisation. On the export side, benefits are limited in terms of improved market access;

Second, a 'soft' FTA agreement would undermine the multilateral trade system by diverting contracting parties to the regional agreement from the pursuit of MFN-based liberalisation. It would also contribute to the fragmentation of world trade;

Finally, while the multilateral system is based on rules applicable to all members, an FTA rests on a power relationship, that permits the dominant partner, especially within a preferential North-South agreement, to influence the process of liberalisation of the other party as a function of its own interests.

The question posed by Article XXIV relates to the degree of economic and political integration that the EU desires with the ACP. Is it a question, as is the case in North Africa, of 'anchoring' these countries to Europe? To what extent can the integration project be considered realistic? Has Europe the means for such a policy, in addition to its commitments towards Eastern Europe, the Balkans and the Mediterranean?

The ACP countries which will negotiate will not do so to obtain concessions, but rather to not lose what they already have, or not to risk eventual sanctions on the level of aid.

They will negotiate within the very strict limits imposed by the WTO (which regulates the nature of eventual EPAs) and by the EU itself (which limits the ACP's negotiating options).

Many uncertain factors over which ACP countries do not always have control will determine the interest of negotiating with the EU, and in what way. This is all the more likely when we recall that the ACP will also be conducting other trade negotiations at the level of their own regions and in the WTO.

For the ACP, the first step in preparing the future negotiations is domestic: To identify trade interests at the national and regional levels, within the framework of sustainable development strategies, and to then decide on the negotiating strategies in different fora. The 'post-Cotonou' trade agenda is one of the elements that push ACP countries to adopt an active stance to master their integration into a more liberalised world economy.