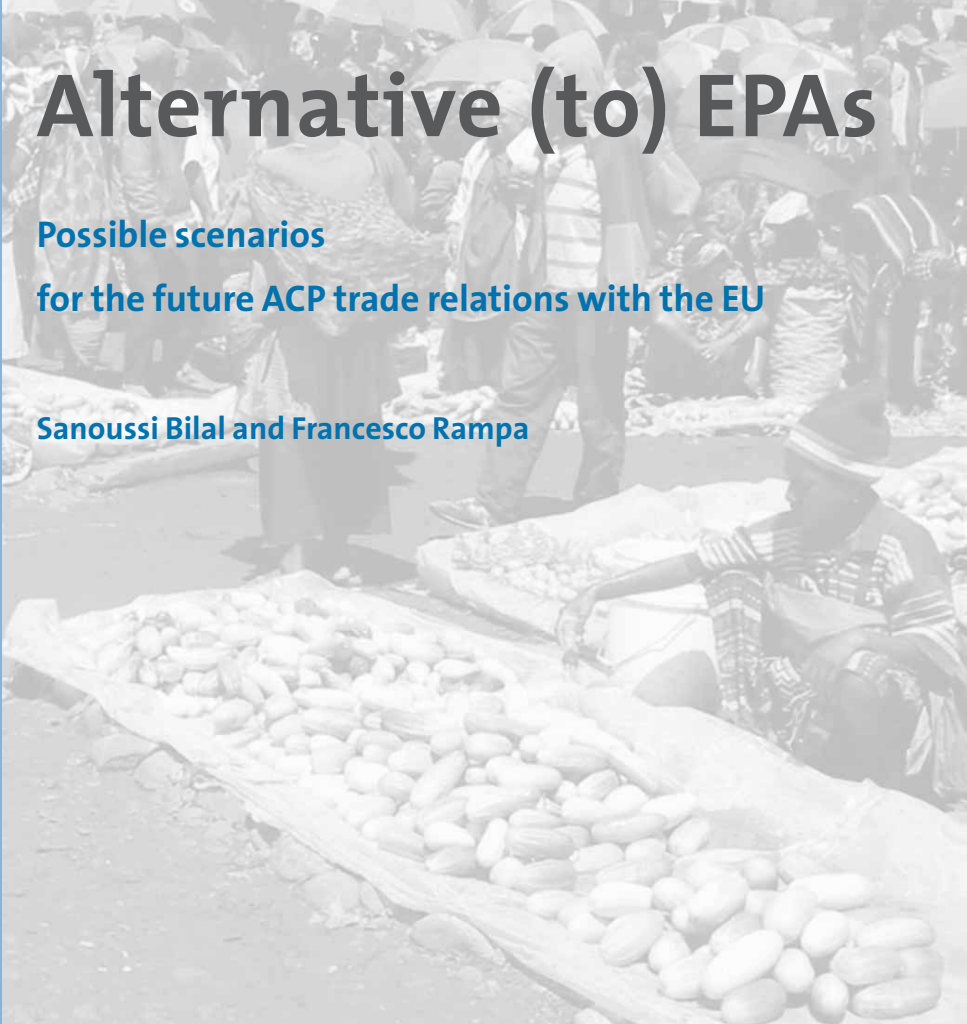


Policy Management Report 11

Alternative (to) EPAs

**Possible scenarios
for the future ACP trade relations with the EU**

Sanoussi Bilal and Francesco Rampa



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February 2006

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We would like to thank Nick Charalambides, Kripali Manek, Laura Merrill, Wallie Roux, Chris Stevens and Bertram Zagema, as well as the participants of the experts meeting organised by Oxfam International and Both ENDS on 28 November 2005 in Brussels for their useful comments on an earlier version of this study. We are also grateful to Vincent Roza for his most helpful support and background contributions to this paper. The views expressed in this study are those of the authors only and should not be attributed to ECDPM, which is an independent and non-partisan foundation working on ACP-EU relations and development policy.

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Bilal, S. and F. Rampa. 2006. *Alternative (to) EPAs: Possible scenarios for the future ACP trade relations with the EU* (ECDPM Policy Management Report 11). Maastricht: ECDPM. www.ecdpm.org/pmr11

Photo

ECDPM, Francesco Rampa (Mount Hagen market, Western Highlands Province, Papua New Guinea, 2004)

ISBN-10: 90-72908-29-5 (as from 1 January 2007) ISBN-13: 978-90-72908-29-2

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Acronyms

ACP	African, Caribbean and Pacific States
AGOA	African Growth and Opportunity Act
AU	African Union
BLNS	Botswana, Lesotho, Namibia and Swaziland
CARICOM	Caribbean Community and Common Market
CARIFORUM	Caribbean Forum (Caribbean ACP States)
CEMAC	Communauté Economique et Monétaire de l'Afrique Centrale
CET	common external tariff
COMESA	Common Market for Eastern and Southern Africa
CPA	Cotonou Partnership Agreement
DCs	developing countries
DG Trade	Trade Directorate General (of the European Commission)
EAC	East African Community
EBA	Everything but Arms Initiative
EC	European Commission
ECOWAS	Economic Community of West African States
EDF	European Development Fund
EPAs	economic partnership agreements
ESA	Eastern and Southern Africa
EU	European Union
FTAs	free-trade agreements
GAER	General Affairs & External Relations
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GSP	generalised system of preferences
ICTSD	International Centre for Trade and Sustainable Development
LDCs	least-developed countries
MDGs	millennium development goals
MFN	most-favoured nation
NAFTA	North American Free Trade Agreement
NGO	nongovernmental organisation
NIPs	national indicative programmes
RI	regional integration
RIPs	regional indicative programmes
RPTFs	regional preparatory task forces
RTAs	regional trade agreements
SACU	Southern African Customs Union
SADC	Southern African Development Community
SDT	special and differential treatment
SPS	sanitary and phytosanitary
UEMOA	Union Economique et Monétaire Ouest Africaine
TBT	technical barriers to trade
TDCA	Trade, Development and Cooperation Agreement
WTO	World Trade Organization

Foreword

Oxfam International and Both ENDS are very pleased to endorse this study '**Alternative (to) EPAs - Possible scenarios for the future ACP trade relations with the EU**'. Written by Sanoussi Bilal and Francesco Rampa of the European Centre for Development Policy Management (ECDPM), the study discusses and clarifies the options that are available to the African, Caribbean and Pacific (ACP) countries involved in negotiations on Economic Partnership Agreements (EPAs) with the European Union (EU), thereby broadening the potential scope of the EPA negotiations and putting development at the very heart of the debate.

Since de-colonisation, the relationship between the EU and 77 of its Member States' former colonies in Africa, the Caribbean and Pacific (the ACP countries) has remained important for both sides, symbolised by the successive agreements of Yaoundé (1963-1975), Lomé (1975-2000), and most recently, Cotonou (2000-2020). An important feature of these agreements has been the preferential access to the European market that they have granted to exporters from ACP countries. Even though the full potential of these trade preferences has never been realised, trade with the EU continues to be a crucial element in most ACP countries' development strategies.

The conditions of trade between the EU and ACP countries may change dramatically as a consequence of the current negotiations on Economic Partnership Agreements. All stakeholders in these negotiations agree that development must be the primary objective of these agreements. However, much controversy has arisen on what kind of agreement would best serve development in the ACP countries.

For its part, the EU is proposing to sign free trade agreements with the ACP countries for trade in industrial and agricultural goods. Unlike the current non-reciprocal trade preferences, for which a waiver from WTO rules had to be obtained from other WTO members, a reciprocal free trade agreement would be compatible with WTO rules. In addition, the EU also proposes a number of additional linked agreements, from market access for services to rules on investment, competition, and trade facilitation.

Many governments and other stakeholders in ACP countries have concerns about the EU's proposals. A free trade agreement with the EU for them would mean having to reduce and eventually abolish protective (and government income-generating) tariffs on 'substantially all' (as prescribed by the WTO) imports from Europe. Moreover, in the context of the Doha Round of WTO negotiations, the ACP countries, along with other developing countries, have rejected agreements on investment and competition. The ACP countries have declined such agreements again in the context of the EPAs, but are reluctant to disengage from EPA negotiations altogether, because of the importance of trade relations with the EU and of European development funds to ACP countries. Above all, it is unclear what the alternative options to an EPA as envisioned by the EU might be.

It is in presenting alternative options to the EU's proposal that this important new study by the ECDPM makes a welcome contribution to the debate. In particular, it explains why a reciprocal free trade agreement is not the only possible strategy to ensure a WTO compatible market access agreement between EU and ACP countries. It also notes that the WTO rules on free trade agreements and on preferential treatment are somewhat open to interpretation. Moreover, in principle those rules can be changed, or an extension of the current waiver from WTO rules can be negotiated. Besides, the study also clarifies that the different items proposed in the negotiations do not necessarily need to be combined in one comprehensive agreement. Thus, the issue of WTO compatible trade preferences does not need to be linked to agreements on investment or competition, or services.

The study shows a broad range of alternative scenarios that are open to the ACP countries. We sincerely hope that in this way, it will help to create the space for an open debate within and between ACP and EU countries, on the future of ACP-EU trade relations.

Adrie Papma, Head, Make Trade Fair Campaign,
Oxfam International

Sjef Langeveld, Director,
Both ENDS



Executive Summary

Since 1996, when regional, reciprocal free-trade agreements were suggested to replace the Lomé regime on non-reciprocal trade preferences granted by the European Union (EU) to the African, Caribbean and Pacific (ACP) States, the possibility of alternative trading arrangements to these economic partnership agreements (EPAs) has been considered. The Cotonou Partnership Agreement (CPA), which defines the new framework for the relationship between the EU and the ACP over the period 2000-2020, explicitly provides for the negotiation of EPAs, due to enter into force by 2008, as well as for the consideration, if necessary, of alternatives arrangements.

With the preparation for the EPA negotiations and their formal launching in September 2002, most attention has been focused on the possible framework, configuration, content and impact of such EPAs. Although some progress has been achieved since the start of the negotiations, the prospect of EPAs has also raised serious concerns related to a range of issues, including the development dimension of these EPAs and their impact on poverty, on the regional integration process of the various ACP regional groupings, on the unity of the ACP Group, as well as the merits of reciprocal market opening, the capacity of ACP countries and regions to negotiate and implement EPAs and the linkages and coherence with parallel trade initiatives, notably at the World Trade Organization (WTO) with the ongoing Doha Round. Addressing these concerns in the context of EPA negotiations has proved a difficult challenge, and increasing consideration has been given to possible alternatives to EPAs, mainly (but not only) from actors in civil society.

What would happen if some ACP countries or regions chose not to conclude an EPA with the EU? What trade regime could the EU offer to accommodate their needs and interests? Even in the case of ACP states interested in entering into an EPA, how can they assess whether the EPA negotiated is a good one or not? To what can the newly negotiated regime be compared, to which alternative? To address these questions, ACP countries, as well as the EU, should consider alternatives to EPAs for two main reasons: (1) as a fallback position in case an EPA is not concluded, and/or (2) as a benchmark scenario against which the outcome of EPA negotiations can be evaluated. Although the former is the case most commonly referred to, EPA negotiators need to consider possible alternatives as benchmarks to assess their efforts.

The purpose of this Study is to provide an overview and assessment of possible alternatives to EPAs in order to clarify the choice of alternative options that ACP countries have, to inform the policy debate and help increase the understanding of the different participants in the negotiations. It is important as well to specify what this Study is not about. It does not intend to assess the merits of EPAs. Nor does it attempt to assess whether alternatives are preferable to EPAs or to rank alternative scenarios according to their desirability or likelihood. These are tasks left to the interested stakeholders in ACP-EU relations.

After a brief Introduction, the Study starts in Chapter 2 by introducing the key legal framework for the negotiations of EPAs and possible alternatives, as defined in the Cotonou Partnership Agreement, and the debate it has generated. This is intended to help define the context in which alternative scenarios to EPAs have to be envisaged.

A key condition for any new regime governing ACP-EU trade relations is that it must comply, by 2008, with WTO rules. Chapter 3 reviews what the conditions imposed by the WTO rules are, particularly on regional trade agreements (Article XXIV of GATT 1994) and special trading arrangements involving developing countries (the Enabling Clause), as well as the prospect of altering these rules under the current Doha Round of multilateral negotiations. This joint ACP-EU commitment to making their trade regime compatible with WTO rules poses a serious challenge in regard to the design of EPAs or alternative arrangements.

The Study then proceeds, in Chapter 4, to outline the key development objectives of EPAs as perceived by the various stakeholders (EU, ACP and civil society). In doing so, it highlights some of the issues that have surrounded the EPA negotiation process, the mounting frustration of some of the actors and the increasing interest in alternatives trading arrangements. Assessing the economic impact of EPAs has proved a difficult task, as illustrated by the survey of regional studies in Section 4.1, raising concerns not only about the potential negative effects of the creation of ACP-EU free-trade areas (notably in terms of loss of fiscal revenues and threats to ACP regional-integration processes), but also about the little guidance provided by such impact studies on the ultimate benefits of EPAs (notably because of data and methodological limitations). The question remains, therefore, as to whether EPAs

will effectively foster development. While all parties agree that EPAs should, first and foremost, be tools for development of the ACP, the EU and ACP approaches are not yet in line, as discussed in Section 4.2. The ACP would like to see, in parallel, greater emphasis on development measures accompanying and linked to the trade negotiations. Some ACP and European officials and politicians, as well as representatives of civil society, have increasingly questioned the development dimension of EPAs, and a large coalition of North and South non-governmental organisations (NGOs) has even campaigned to 'Stop EPA'. These concerns have prompted a debate, summarised in Section 4.3, over the opportunity and merits of alternatives to EPAs.

With these considerations in mind, the remainder of the Study identifies a range of alternative scenarios to EPAs and offers a systematic discussion of their key characteristics (summarised in Table 6). This latter constitutes the core of the Study and is the part the reader should refer to in order to grasp the basic reasoning and key controversies behind the debate on possible alternative(s) (to) EPAs. Abstracting from the debate over the merits of EPAs and their possible alternatives, Section 5.1 stresses the usefulness for all parties, irrespective of their perspectives or official positions, of considering alternatives. However, to be fruitful, a discussion requires clarity. The debate on EPAs has often been confusing, particularly regarding what an EPA should be. Without a clear definition of an EPA, the identification of alternatives becomes more difficult. As argued in Section 5.2, it is useful to consider that an EPA must entail (some elements of) reciprocity in the liberalisation of substantially all trade among the parties (according to what was originally agreed upon in the Cotonou Partnership Agreement). As such a trading arrangement may take various forms (notably related to the level of reciprocity), this Study identifies various *alternative EPAs*, which thus have to comply with GATT Article XXIV (in its current or revised form). Should the new trade regime deviate from the reciprocity principle, and thus fall outside the scope of GATT Article XXIV, it would then clearly constitute an *alternative to EPAs*. Chapter 6 then proceeds to present these two broad families of scenarios, identifying a range of alternative EPAs in Section 6.1 and alternatives to EPAs in Section 6.2, outlining their main features and discussing their main implications.

The **benchmark scenario** (6.1.1) is the basic EPA currently proposed by the European Commission. It is a reciprocal WTO-compatible FTA where ACP countries would

have to liberalise around 80% of their trade with the EU (with differences between regions due to different trade balances between the parties), and the EU would probably offer duty-free access to ACP countries over a period of around 12 years, according to the standard interpretation by the EU of ‘substantially all trade’ and ‘reasonable length of time’ as per GATT article XXIV. The agreement would strengthen regional integration initiatives (based on the EU integration example) and would also include liberalisation of services, as well as investment, competition, trade facilitation and other ‘behind the border’ provisions (which would make it an FTA+).

A **minimalist approach to EPA** would consist of an ‘**EPA light**’ (6.1.2), a reciprocal FTA focusing, in a first stage, on the opening of ACP markets to the minimum level necessary to secure WTO compliance while seeking to limit the potentially negative effects of any significant liberalisation by the ACP. Provided the EU granted duty-free access to all ACP countries, these countries could commit to liberalising only 50%-60% of their trade with the EU over a longer transition period (20 years or more). In a second stage, negotiations with the EU could centre on a long-term approach to address supply-side capacity constraints in the ACP (including through investment, competition, etc.), building effective regional markets, as well as further liberalisation from the ACP side. This scenario is on the border line of WTO compatibility under existing rules, and by de-linking market-access negotiations from broader trade and trade-related issues, it may fail to deliver on the development promises of EPAs (in part by diminishing the bargaining chips of the ACP because the major concession they can offer to the EU is the opening of their markets).

An alternative approach would be to introduce as much flexibility as possible in an EPA, in the form of **explicitly recognised special and differential treatment (SDT)** (6.1.3). This reciprocal FTA+ would include services and ‘behind the border’ provisions, as in the benchmark scenario, but with flexibility for the ACP to liberalise much less and over longer implementation periods than the EU. This might be done either in the context of the existing WTO rules (convincing the EU to change its self-defined criteria for WTO compatibility) or by amending GATT Article XXIV in the negotiations of the Doha Round (as outlined in a formal proposal by the ACP Group to reform current rules to cater for development concerns and SDT in regional trading agreements). The major drawbacks of this scenario are the uncer-

tainty related to the first option (the greater the flexibility introduced in an EPA, the greater the risk that an aggravated WTO member would challenge it under the WTO dispute-settlement mechanism) and the unlikely possibility of a consensus at the WTO on reform of article XXIV.

Another unusual type of market opening characterises an ***EPA with binding provisions for development-related liberalisation*** (6.1.4). This scenario would envisage binding provisions in the new trading arrangements, making successive stages of tariff reduction for the ACP conditional upon the achievement of development thresholds (once an ACP country reached a certain development level, it would be deemed ready to further open its markets) and/or the delivery by the EU of EPA-related development cooperation. Such conditional reciprocal FTAs fall outside the definition of a free-trade area or regional trade agreement as currently envisaged in the WTO.

A fifth scenario (6.1.5) could be ***an EPA for ACP non-LDCs only*** and the ‘everything but arms’ (EBA) initiative for the ACP LDCs (i.e., duty- and quota-free access to the EU). Considering the negative effects of reciprocal trade liberalisation, ACP LDCs already benefiting from EBA under the EU GSP (WTO compatible under the Enabling Clause) may decide not to provide reciprocity. ACP Non-LDCs need, instead, to find an alternative trade regime to the current Lomé/Cotonou preferences, and assuming that the GSP does not offer market access as advantageous as the current regime, the only option for ACP non-LDCs to maintain or improve on their level of preferences for the EU market would be to enter into an EPA. It would be difficult under this approach for any ACP region to effectively implement regional-integration programmes because the group would be split between the (non-LDC) countries that enter an FTA+/EPA with the EU, and those (the LDCs) that maintain their trade barriers against the EU (without addressing ‘behind the border’ issues).

In the ‘***menu approach***’ (6.1.6), the different components of an EPA (trade in goods and in services, investment, possible sector-specific arrangements as in fisheries, and so forth) could be covered under separate individual agreements, and countries in one region would be offered a ‘menu’: all would sign a ‘master agreement’ establishing the principles to govern the EPA relationship but individual countries

would be allowed to join only those specific ‘subsidiary agreements’ they are prepared to commit to. Potentially very different treatment of different countries under market-access arrangements (as well as non-trade areas) risks breaking up the ACP regions, and the WTO compatibility of such a scenario is, at best, uncertain.

Although ACP countries have all opted for a regional configuration to enter EPA talks, negotiations might lead to the conclusion of **country-specific EPAs** (6.1.7). These would be reciprocal FTAs+ with the EU at the national level, in line with article XXIV, with country-specific levels of reciprocity, implementation schedules and treatment of trade-related issues. This could provide greater flexibility for some countries that seek SDT in an EPA or it could impose more rigorous constraints, depending on a number of factors, including bargaining power and particular country characteristics like the size of the economy. Unless coordinated at the regional level, country-specific EPAs may seriously disrupt regional integration.

At the opposite extreme of the range of available geographical EPA configurations is an **all-ACP EPA** (6.1.8), a unique reciprocal FTA+ that would be conducive to both regional integration and ACP unity on issues of common interest. The feasibility of such a scenario is questionable given that regional EPA negotiations are currently entering into the details of a possible agreement, with marked differences between regions in terms of both progress and content.

The second family of scenarios presented in Section 6.2 comprises alternatives to EPAs as they deviate from the reciprocity principle, envisaging either no liberalisation for the ACP at all or different types of market opening (i.e., not only vis-à-vis the EU). For this reason and because such approaches would in general not affect regional integration, they are favoured by those concerned with the potentially negative impact of EPAs. Another key feature is that they would not include liberalisation of services and ‘behind the border’ provisions, which, according to the EU, are an important developmental aspect of an agreement while for other stakeholders constitute an additional burden for ACP negotiators (and too advanced stages of liberalisation). On the other hand, these alternatives to EPAs would require changes in either the existing WTO rules or the preferential tariff schemes of the EU, which implies strong political will in Europe (a policy shift) and a higher degree of ACP-EU cooperation in multilateral fora.

One option is an ***incomplete FTA with embodied liberalisation vis-à-vis the rest of the world***, not only the EU (6.2.1). ACP countries would enter into EPAs with the EU but would be required to liberalise against all trade partners (MFN liberalisation) and not fully (liberalise, for instance, to a uniform 10% MFN duty). Although this would avoid the trade-diverting effects of an EPA, for this scenario to be feasible, WTO rules would have to be changed, either Article XXIV or the Enabling Clause, because this proposal is obviously in violation of both provisions.

A different scenario is the modification of the ***EU GSP*** (6.2.2), since the existing scheme (that many, especially EC officials, consider the only real alternative to EPA) would offer worse preferential access to ACP non-LDCs than Lomé/Cotonou, thereby violating the provisions of the Cotonou Agreement. An ‘enhanced’ GSP to incorporate all ACP exports and (where they are inferior) to improve market-access preferences to the Cotonou level would constitute a WTO-compatible alternative to EPAs, with definite appeal for ACP non-LDCs as well. One of the main advantages of this scenario is that the EU would justify it at the WTO—not under Article XXIV but under the Enabling Clause. On the other hand, ACP non-LDCs would be treated as other developing countries and face problems of preference erosion.

A simpler scenario is the extension of ***EBA*** (6.2.3), whereby non-reciprocal free market access could be granted to all ACP countries, the G90 group of poorer countries, or all developing countries. The first two options violate the existing Enabling Clause because they discriminate among developing countries (since both ACP and G90 are arbitrarily defined groups, not recognised by the WTO); the third does not, but it is an unrealistic outcome because it would open the EU market also to large and highly competitive developing countries.

A last option (6.2.4) would be to ***prolong the current Lomé/Cotonou regime*** beyond the end of the 2007 deadline, which would require either a new waiver at the WTO, with the likely opposition of some WTO members, or a joint ACP-EU proposal to change WTO rules to allow for the perpetuation of the Lomé/Cotonou preferences. Both the EU and several WTO members seem unwilling to follow such an approach.

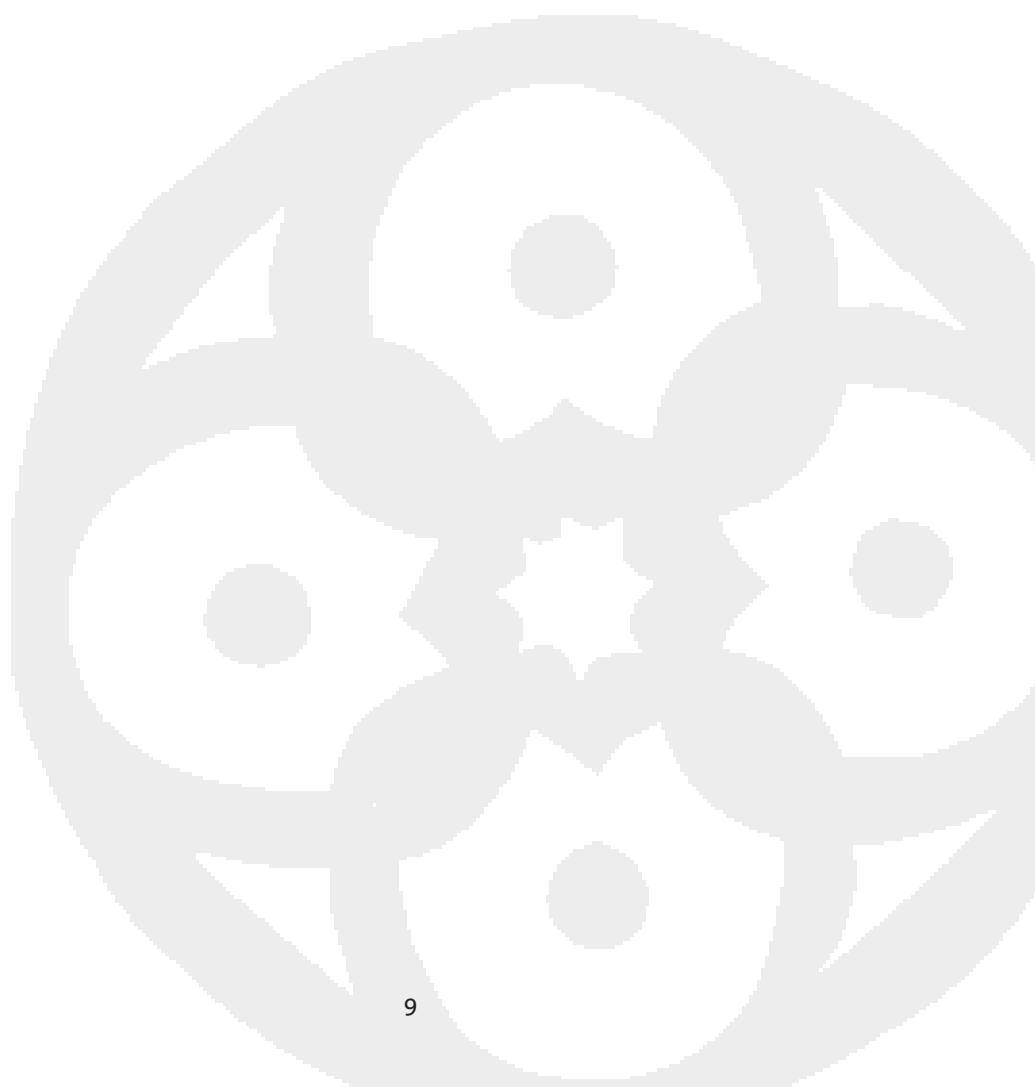
The final part of the Study covers important methodological issues in regard to the possibility of assessing different EPA scenarios, as well as the process of taking EPA negotiations forward (Chapter 7), and offers some conclusions (Chapter 8). Section 7.1 emphasises that the scenarios discussed in Chapter 6 present too many uncertainties around possible EPA provisions to be used to predict their economic impact or to be ranked according to developmental outcomes, which would be determined by the exact content of the agreement(s) and the specific implementation steps a Government would take. Although some attempts have been made to provide first estimates regarding the market-access dimension of EPAs or their alternatives, as described in Section 7.2, the uncertainties surrounding a more in-depth assessment of the economic and developmental impact of EPAs and alternatives to them call for more efforts from all parties to research and discuss these issues more thoroughly. This would also mean strengthening the participatory approach towards EPA negotiations and urgently coming up with comprehensive national positions on EPAs (to be compromised at the regional level) in line with key development strategies. Section 7.3 describes a possible approach to achieve that through the use of development benchmarks.

Chapter 8 concludes that while it is difficult to assess a priori the development prospect of each scenario, thus preventing any formal ranking of more desirable options, criteria can be set to consider their main characteristics: the degree of market-access opening (including the level of reciprocity and duration of the transitional period), compliance with WTO rules, the influence on regional integration, the scope for development-oriented outcomes and political feasibility. It also suggests a possible way forward in assessing the development dimensions of the range of scenarios proposed: to define development benchmarks. Once a sound methodology has been put in place, this approach should allow each ACP country and region to identify its own benchmarks—those that would guide its EPA negotiations—and the relevance of various alternative trade regimes for its development. In this context, it is recommended that all concerned stakeholders seize the opportunity of the 2006 Review of EPAs to assess the whole process of the EPA negotiations so far, make changes where necessary within the negotiations and, if needed, propose alternative routes.



Chapter 1

Introduction



1 Introduction

In 1996, negotiations of regional, reciprocal free-trade agreements were suggested to replace the Lomé regime on non-reciprocal trade preferences granted by the European Union (EU) to the African, Caribbean and Pacific (ACP) States. Since that time, the possibility of alternative trading arrangements to these economic partnership agreements (EPAs) has been considered. The Cotonou Partnership Agreement, which defines the new framework for the relationship between the EU and the ACP over the period 2000-2020, explicitly provides for the negotiation of EPAs, due to enter into force by 2008, as well as for the consideration, if necessary, of alternative arrangements.

With preparation for the EPA negotiations and their formal launching in September 2002, most attention has been focused on the possible framework, configuration, content and impact of such EPAs. Although there has been some progress during the first phases of the negotiations, the prospect of EPAs, themselves, has raised serious concerns related to a range of issues, including the development dimension of these EPAs: their impact on poverty, on the regional integration process of the various ACP regional groupings, on the unity of the ACP Group, as well as the merits of reciprocal market opening, the capacity of ACP countries and regions to negotiate and implement EPAs and the linkages and coherence with parallel trade initiatives, notably at the World Trade Organization (WTO) with the ongoing Doha Round. While addressing these concerns in the context of EPA negotiations has proved a difficult challenge, increasing consideration has been given to possible alternatives to EPAs, mainly (but not only) from actors in civil society.

What would happen if some ACP countries or regions chose not to conclude an EPA with the EU? What trade regime could the EU offer to accommodate their needs and interests? Even in the case of ACP states interested in entering into an EPA, how could one assess whether the EPA negotiated is a good one or not? What can the newly negotiated regime be compared to, to which alternative?

The purpose of this paper is to provide an overview and assessment of possible alternatives to EPAs, in order to clarify the choice of options that ACP countries

have, to inform the policy debate and to help increase the understanding of the different participants in the negotiations. It is important as well to specify what this paper is not about. This paper does not intend to assess the merits of EPAs. It does not attempt to assess whether alternatives are preferable to EPAs, nor does it rank alternative scenarios according to their desirability or likelihood. These are tasks left to the interested stakeholders in ACP-EU relations.

The methodology adopted to conduct this study rests on extensive informal consultations, specific interviews, and regular exchanges of information with a wide range of ACP and EU stakeholders, including negotiators, government representatives, and members of civil society, the private sector, research and academic institutions. It also benefited from discussions during the presentations of an early draft of the study held in November 2005 during the ACP-EU Joint Parliamentary Assembly in Edinburgh and an Experts Meeting in Brussels, as well as feedback and specific comments from interested stakeholders. The references the study draws upon are certainly not exhaustive but constitute a very useful reading list for those interested in gaining more insight into the debates surrounding EPA negotiations.

The discussion is structured as follows: Chapter 2 reviews the legal framework of the Cotonou Agreement relevant for EPAs or any alternative trading arrangement, and Chapter 3 looks at the constraints imposed by the multilateral rules of the WTO. Chapter 4 then outlines the various development dimensions expected from EPAs and the debate generated about the merits of EPAs. In this context, Chapter 5 explains why it is most useful to seriously consider alternative(s) (to) EPAs. Various alternative scenarios are presented in Chapter 6. While it is difficult to assess the specific development impact of each scenario, as discussed in Chapter 7, Chapter 8 concludes with a discussion of the necessity to understand the broad characteristics and consequences of all alternatives, as attempted in this Study, and the need for concerned stakeholders to identify specific development benchmarks to better inform the policy choice of a new trade regime.



Chapter 2

The framework of the Cotonou Agreement



2 The framework of the Cotonou Agreement

Before considering the various dimensions of possible alternatives to EPAs, it is worth recalling some key provisions of the Cotonou Partnership Agreement (CPA). The prospect of EPAs, based on the principle of reciprocity with the creation of comprehensive free-trade areas between the European Union and the African, Caribbean and Pacific states, constitutes a cornerstone of the new trade relationship envisaged in the CPA. This perspective, heightened by the evolution of the current EPA negotiations, has raised serious questions regarding the effective contribution that can be expected from EPAs to the sustainable development of the ACP states. As a result, greater attention has recently been given to the consideration of alternative trading arrangements, also explicitly foreseen in the CPA.

2.1 EPA negotiations in the Cotonou framework

The Cotonou Partnership Agreement, signed on 23 June 2000, is envisaged as a partnership between the European Union and the African, Caribbean and Pacific States. Its central objective is the reduction and eventual eradication of poverty, 'consistent with the objectives of sustainable development and the gradual integration of the ACP countries into the world economy' (Article 1). The CPA encompasses three pillars for the relationship between EU and ACP countries: *political, development, and economic and trade cooperation*. This partnership is to provide a coherent framework to support the development strategies adopted by each ACP state. Within this framework, the objective of economic and trade cooperation is to foster the smooth and gradual integration of the ACP states into the global economy (CPA Article 34). Economic and trade cooperation shall aim at enhancing the production, supply and trading capacity of the ACP countries, as well as their capacity to attract investment. The CPA also states that economic and trade cooperation shall build on regional integration initiatives of ACP states, bearing in mind that regional integration is a key instrument for the integration of ACP countries into the world economy.

The major innovation in the economic and trade pillar of the CPA is the agreement to negotiate new Economic Partnership Agreements (EPAs) between ACP countries

and the EU (CPA Article 36). The two parties agreed to negotiate and conclude new trading arrangements compatible with WTO provisions. This will entail the phasing out of the trade preferences granted since 1975 under the Lomé Conventions to the ACP and progressive removal of trade barriers between the ACP and EU, with liberalisation of reciprocal trade starting in 2008. Since substantially all imports from the ACP countries to the EU are already de facto duty and quota free¹, most of the trade liberalisation will have to come from the ACP.

Article 37 of the CPA spells out the procedures for such negotiations and states that EPAs shall be negotiated during the five-year preparatory period, starting from September 2002, to be concluded by 31 December 2007.

In practice, the negotiations have been structured around two main phases. The first (Phase I) was an overall ACP Group discussion with the EU on general issues of common interest to all ACP states as well as the framework of an EPA. This was followed by Phase II on substantive negotiations at the regional level. In spite of the consensual rhetoric of its conclusion, Phase I was in fact characterised by disagreement between the two parties on its final objective. The EU maintained that Phase I was aimed at exploring and clarifying broad issues of interest to the whole ACP Group but that it should not be concluded with an agreement or binding commitments. The ACP instead initially considered Phase I as an opportunity to sign an agreement with the EU on general principles and specific issues common to all ACP states (such as rules of origin and a dispute settlement mechanism), which would act as an umbrella for more detailed treaties negotiated at the regional level. In fact, the only concrete outcome of Phase I was a joint report outlining issues debated thus far. The two sides agreed to continue talks at the all-ACP level on some issues, and they have had some discussions on these². Partly because of changes at the ACP Secretariat (including the appointment of a new Secretary General and his staff), all-ACP processes with respect to EPAs has slowed down since mid-2004, but several meetings are scheduled for the coming months in an attempt to rejuvenate such initiatives.

1 96.5% of all imports (all industrial products and 80% of agricultural products) from the ACP already enter the EU duty free (European Commission, 2005b; Maerten, 2004). The European Commission has pledged to further open its market to ACP products under EPAs, improving on the current level of preferences.

2 For details, see the regular EPA Updates by Melissa Julian in *Trade Negotiations Insights*, www.acp-eu-trade.org/tni.

Since October 2003, the ACP countries have started Phase II negotiations at the regional level for individual EPAs with the EU. The six self-determined ACP regions are as follows:

<i>Central Africa</i>	CEMAC (Communauté Economique et Monétaire de l'Afrique Centrale) plus Sao Tome and Principe	negotiations launched on 3 October 2003
<i>West Africa</i>	ECOWAS (Economic Community of West African States) plus Mauritania	negotiations launched on 6 October 2003
<i>East and Southern Africa</i>	an open configuration currently comprising COMESA countries minus Egypt and South Africa	negotiations launched on 7 February 2004
<i>Southern African Development Community</i>	Botswana, Lesotho, Namibia, Swaziland (BLNS) plus Angola, Mozambique and Tanzania	negotiations launched on 8 July 2004
<i>CARIFORUM</i>	Caribbean Forum of ACP States	negotiations launched on 16 April 2004
<i>Pacific ACP States</i>		negotiations launched on 10 September 2004

Although regional negotiations take place independently from each other, they follow an overall framework of similar negotiating principles and indicative schedules for discussion. For each region, the two parties have agreed on a Joint Road Map for the conduct of the negotiations. In general, this framework is articulated around two parts: (1) a first part of the regional negotiations to review the status of and strengthen regional integration, addressing technical barriers to trade (TBT) and sanitary and phytosanitary (SPS) measures; and (2) another part dedicated to substantive negotiations on the content of the new partnership agreement. The latter is commonly referred to as Phase III of the EPA negotiations. It was launched

on 29 September 2005 in the Caribbean and is expected to start in 2006 in the other regions.

Although the EPAs should constitute the new trading arrangements between ACP states and the EU, covering the period from January 2008 onward, the Cotonou Agreement itself continues for 20 years and its provisions for political cooperation and development assistance will remain in force for the whole of this period.³ Development finance and technical assistance, currently available under the European Development Fund (EDF) through the Regional Indicative Programmes (RIPs) and the National Indicative Programmes (NIPs), will still be provided to ACP regions and countries.

2.2 EPAs create tensions

EPAs are envisaged as more than conventional free-trade agreements. They offer opportunities in terms of building on regional markets, stimulating investment, locking in trade reforms, integrating into the world economy, ensuring compatibility with WTO rules and strengthening the linkages between initiatives for economic, trade and development cooperation between European and ACP countries. On the other hand, EPAs also present challenges. Some of their controversial impact may include adjustments to reciprocity (of liberalisation commitments) in an increasingly competitive global context, loss of customs revenues, complex processes of regional integration, and problems with the ACP's capacity not only to negotiate and implement an EPA, but simply to take advantage of any new trading opportunity and to compete. The tensions currently revolving around EPAs arise from their potential to be powerful tools for development, their possible negative impact and uncertainties about their actual content (which will be public only when negotiations are concluded).

Everybody agrees that the new EPAs must first and foremost be development-oriented trade arrangements. Placed in the context of the overall development strategy of ACP countries and the objectives defined in the CPA, EPAs should build on and strengthen regional integration initiatives, facilitate the integration of the ACP

³ In accordance with the revision clause, which foresees the adaptation of the CPA every five years, negotiations to revise the Agreement were launched in May 2004 and concluded on 23 February 2005. The ratification process for the revised CPA is currently ongoing.

countries into the world economy and stimulate economic development and growth, with a view to contributing to sustainable development and poverty alleviation in the ACP. These objectives are not only stated in the Cotonou Agreement, but they have been restated numerous times by the European Union (its institutions and member states), the ACP regions and countries, and various actors from civil society.

However, in the case of developing economies, certain basic conditions must be in place in order for free-trade agreements to lead to economic development and export growth. Developing countries must first be able to both face the possible costs and grasp the potential benefits of liberalisation. On the one hand, the reduced collection of tariff duties that results from import liberalisation affects government revenues, and increased competition from foreign producers may disrupt domestic economic sectors. On the other hand, 'supply-side constraints', such as poor economic infrastructure, an unfavourable investment climate, weak institutions and the lack of a trained work force, prevent many developing countries from taking advantage of the new export opportunities created by trade liberalisation in developed economies. Without adequate policies and resources to adjust and foster the necessary economic transformation and to produce and market their goods competitively, ACP countries are unlikely to benefit fully from new free-trade arrangements with the EU.

It is mainly for this reason that many stakeholders from ACP countries, some EU member states and a large coalition of southern and northern non-governmental organisations (NGOs) (under the umbrella of the 'Stop EPA Campaign') maintain that current EPA negotiations do not include those elements that are required for economic development and export growth to actually occur. They argue that, while the ultimate goals of EPAs are sustainable development and poverty alleviation, the European Commission (EC) has so far shown no interest in integrating matters beyond standard trade(-related) issues into the negotiations. The EC and the Council, for their part, claim that the new trade agreements will bring about development. They say that the EPA negotiations should indeed focus on trade matters and take place within the framework of the Cotonou Agreement, which offers ACP countries a chance to identify a parallel development component to accompany the elaboration and implementation of EPAs.

2.3 The possibility of alternative arrangements in the Cotonou Agreement

As a result of these diverging views and the uncertainty surrounding the content of EPAs and, especially, the CPA's development component, the debate on possible alternative EPA arrangements is still active some three years into the official negotiations. Chapters 3 to 7 of this study address the issue in detail, while the following text outlines the provisions in the Cotonou Agreement for alternatives to EPAs.

Article 37 of the Cotonou Partnership Agreement sets out the procedures for the negotiation of EPAs and explicitly contemplates the possibility for alternative arrangements, distinguishing between the two cases of least-developed countries (LDCs) (paragraph 9) and non-LDC ACP countries (paragraph 6). Article 37.9 provides for special treatment of LDCs that have to be offered 'duty free access for essentially all products...at the latest in 2005'. This already constitutes improved market access for LDCs relative to the CPA trade preferences and led in 2000 to the EU's adoption of the 'Everything but Arms Initiative' (EBA), which provides free access to European markets for all exports 'originating' in LDCs, with the exception of arms. Independent from the outcome of EPA negotiations, therefore, ACP LDCs already have a possible alternative option to choose from, which satisfies both WTO rules and CPA requirements.⁴ Of course, if an ACP LDC chose to enter into an EPA, a reciprocal free-trade agreement, it would have to forfeit non-reciprocal trade preferences with the EU under an EBA, which raises the question of whether ACP LDCs (40 out of the 77 ACP countries) have any serious incentive to join an EPA. In that sense, the EBA remains the most obvious alternative to an EPA for ACP LDCs.

Article 37.6 provides for a mechanism to reach an alternative trading arrangement for the non-LDC ACP countries that do not wish to enter into an EPA:

In 2004, the Community will assess the situation of the non-LDC which, after consultations with the Community decide that they are not in a position to

⁴ The EBA initiative falls under the framework of the EU's Generalized System of Preferences, which is compatible with WTO rules because it discriminates only between LDCs and non-LDC developing countries and not between a specific group (ACP) and the rest of the developing countries as the CPA does. Thanks to this WTO principle, the EU can keep granting trade preferences to ACP LDCs (the same as all LDCs) without reciprocity of liberalisation commitments.

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. (Art 37.6)

Given the fundamental principles of the ACP-EU cooperation, including dialogue, differentiation according to development levels, equality of the partners and ownership of the development strategies (Article 2 of the CPA), this procedure aims to ensure that any non-LDC that believes that an EPA will not bring sufficient developmental benefits is offered a meaningful alternative, without any imposition. Any new trade arrangement must be compatible with WTO rules and leave the country at least no worse off than it is in the existing situation under the Cotonou framework. It is for the ACP country concerned to judge whether the alternative is preferable to an EPA from a development perspective. However, views differ on the interpretation of Article 37.6, notably on the role of the assessment mechanism described thereof within the formal negotiation process.⁵ At the request of the ACP, the EU agreed to postpone the discussion on alternative arrangements.⁶

It is important here to distinguish such mechanism from the formal review of EPAs that the parties will have to undertake with respect to all ACP countries, according to Article 37.4 of the CPA.⁷



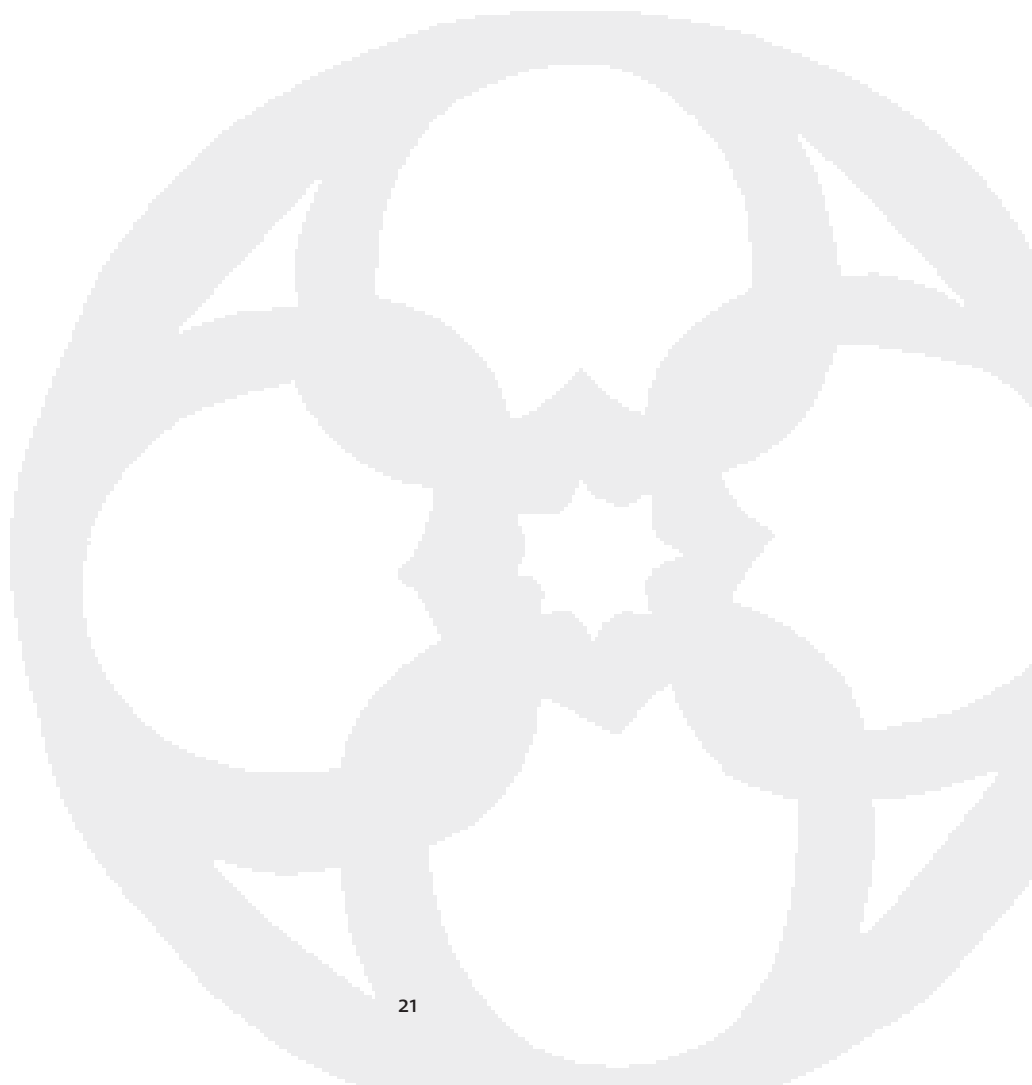
⁵ See Section 4.3 for details.

⁶ Asked whether there are no alternatives offered to negotiating EPAs, the Commission replied: 'The negotiations of EPAs and the examination of alternatives for non-LDC countries were decided in the Cotonou Agreement. At the request of the ACP side, the EU agreed to let the 2004 deadline for discussing alternatives pass and to be prepared for discussing such requests whenever appropriate. But both sides agreed that the joint ACP-EU focus was on designing EPAs which will be the most effective tools for the development of ACP countries. Why would one want to discuss second best alternatives at this stage? It is noteworthy, that no ACP country has so far requested the EU to examine alternatives to EPAs. On the contrary, all ACP countries are currently actively engaged in the negotiations' (European Commission, 2005a, 4.2). Indeed, in response to the request of the ACP to postpone the consideration of alternatives, 'Commissioner Lamy noted that so far no ACP State was in the position referred to in Article 37.6 and reaffirmed that the Community would be prepared to assess the situation at a later stage, if necessary' (draft minutes of the ACP-EU Joint Ministerial Trade Committee meeting of 27 October 2004).

⁷ Article 37.4 of the CPA states that 'The parties will regularly review the progress of the preparations and negotiations and will in 2006 carry out a formal and comprehensive review of the arrangements planned for all countries to ensure that no further time is needed for preparations or negotiations.'

Chapter 3

The commitment to WTO compatibility



3 The commitment to WTO compatibility

The Cotonou Agreement stipulates explicitly and repeatedly that it is imperative that any new trade agreements negotiated between the ACP countries and the EU comply with WTO rules.⁸ WTO compatibility implies first of all that, unlike the last Lomé Convention and the current transitional phase of the Cotonou Agreement, the ACP countries and the EU will not have to seek a new WTO waiver for their new trade agreements.

This means that an EPA, envisaged as a free-trade agreement based on the principle of reciprocity, must satisfy the requirements of Article XXIV of the General Agreement on Tariffs and Trade (GATT) on regional trade agreements (RTAs). The difficulty with the objective of WTO compatibility is twofold. First, uncertainty remains regarding the legally binding interpretation of GATT rules. While GATT Article XXIV sets very clear guiding principles, its specific application remains subject to interpretation, leading to legal uncertainty. Second, rules, notably those pertaining to regional agreements, are subject to negotiation under the Doha Round of multilateral trade negotiations at the WTO. Hence, the form and content of possible EPAs will be influenced by the outcome of the new WTO round, another major source of uncertainty.⁹ The WTO compatibility of EPAs is, therefore, an objective that is ill defined at the moment.

Similarly, any alternatives to EPAs will have to be compatible with WTO rules: GATT Article XXIV (in the case of some free-trade agreement) or the Enabling Clause (in the case of a unilateral preferential trade regime granted by the EU to ACP countries). Since the debate on EPAs and their possible alternatives is significantly constrained by this commitment to WTO compatibility, this chapter highlights some of the key considerations to keep in mind with regard to the relevant WTO rules.

⁸ See Articles 36.1&4 and 37.6&7 of the Cotonou Agreement.

⁹ Article 37.7 recognises this, as it refers to 'conformity with WTO rules *then* prevailing'. Questions remain on what would happen if an EPA is concluded under the current WTO provisions and if, at the end of the Doha Round, these provisions are amended in one way or another. Would such an EPA need to be amended/re-negotiated in order to be WTO compatible under the new rules?

3.1 GATT Article XXIV: a yardstick for EPAs¹⁰

The European Commission proposes to conclude comprehensive development-oriented free-trade agreements (FTAs), the so-called EPAs, with the ACP regions. These new free-trade areas should thus conform to Article XXIV of the GATT of 1994 on regional trade agreements, or a revised version thereof.

However, the application of GATT Article XXIV raises several problems: mainly, the interpretation of this article, which remains ambiguous.

3.1.1 Substantially all trade must be liberalised in RTAs

One key issue is the extent to which trade must be liberalised among the parties for an RTA to comply with WTO rules. While free-trade agreements and custom unions are aimed at establishing free trade within the area, they seldom eliminate all trade restrictions among the partners, but allow instead some exceptions. This common practice is acknowledged and approved by the GATT/WTO rules. Paragraph 8 (b) of GATT Article XXIV stipulates that in an FTA, customs duties and other restrictive trade rules must be eliminated for 'substantially all the trade' and not simply all trade among the FTA members. However, the article does not clarify how trade must be measured, or which proportion of trade must be liberalised between the parties (in terms of volume, tariff line, trade percentage, etc.).

The EU understanding of this clause is that an FTA (and thus an EPA) should entail liberalisation of 90% of the total value of trade among the parties in order to conform to the 'substantially all trade' requirement. Moreover, the EU understands this 90% threshold as an average of the trade between the partners. This has the merit of allowing an asymmetrical approach, which can take into consideration the specific conditions of each partner. In an effort to promote special and differential treatment in relation to the level of development of the partners, the EU is prone to the developing partner liberalising less, while the EU liberalises more, as the long as the average of total trade liberalised reaches the 90% mark.

¹⁰ For a thorough discussion, see Onguglo and Ito (2003).

By way of illustration, within the framework of the Trade, Development and Cooperation Agreement (TDCA) between South Africa and the EU, signed in 1999, the FTA includes 90% of the products traded between the two partners. Yet, the coverage of the TDCA is asymmetric: the EU, the richest region, committed to liberalising 95% of these imports from South Africa, while the latter agreed to import only 86% of the EU products without customs restrictions.

In the context of EPAs, the popular understanding is, therefore, that if the EU liberalises 98% to 100% of its trade, the ACP countries will have to liberalise only 80%-82% of their trade to meet the EU's criterion of an average of 90% for WTO compatibility. In reality, however, one should take into account the balance of trade among the partners and the structure of trade barriers. This is easily illustrated with an extreme case.

Imagine that the ACP would have prohibitive tariffs, *de facto* preventing any significant level of imports from the EU, whereas the EU would maintain a low level of protection, at say around 5%, favourable to ACP exports to the EU.¹¹ This situation would lead to a mainly one-way trade from the ACP to the EU, with a huge trade balance deficit for the EU. Now, the WTO requirement to liberalise substantially all trade would lead the EU, under the EU criterion of an average of 90% of the value of trade between the partners, to liberalise at least 90% of its imports from the ACP, whereas the ACP, which would not (or would only marginally) import from the EU due to a prohibitive rate of protection, would not (or would only marginally) have to liberalise. In other words, the partner experiencing a deficit in its balance of trade (importing more than it exports) would have to liberalise more than the other (see Section 6.1).

In practice, the threshold applied in EU agreements seems to be higher than the minimum "Substantially all the trade" requirement, as understood by the EU. A study of the Commonwealth Secretariat shows that the agreements that the EU concluded with its partners generally covered more than 90% of their trade, while the EU's partners often open their borders more than the EU, as illustrated in Table 1.¹²

¹¹ This is not the case in reality, as this hypothetical situation is imagined only for the sake of illustration.

¹² See Davenport (2002).

Table 1: Share of Trade Not Subject to Tariff or Non-Tariff Barriers (Percent)

	EU		Partner		Total	
	imports		imports		trade	
	1998	1999	1998	1999	1998	1999
EU-Tunisia Mediterranean Agreement	95.2	92.9	95.4	96.7	95.3	95.0
EC-Egypt Cooperation Agreement	85.7	84.5	100.0	100.0	96.4	96.4
EC-Turkey Customs Union	86.4	86.9	97.6	97.6	93.3	93.1
EC-Hungary Europe Agreement	92.7	93.5	98.5	98.8	95.8	96.3
EU-South Africa Trade, Dev't. and Co-op. Agreement	90.2	91.1	91.1	90.3	90.7	90.7

Source: Davenport (2002).

These experiences give a more precise idea of a possible interpretation of Article XXIV, as adopted by the EU. However, the WTO has not yet formally endorsed this interpretation, which could be challenged.

3.1.2 The transition period to implement an RTA

Another major area of uncertainty relates to the time allowed to implement an RTA. Paragraph 5 (c) of GATT Article XXIV provides for a period of possible transition to liberalise substantially all the trade among the parties. This 'reasonable length of time' in the establishment of an FTA should not exceed 10 years, but 'a longer period' may be authorised 'only in exceptional cases'. In practice, many FTAs include longer implementation periods, as illustrated in Table 2. It is important to note, however, that these longer periods have been adopted unilaterally by the parties to an FTA, and have not been formally authorised by the WTO, as in practice, the WTO Committee on Regional Trade Agreements does not take decisions on the compatibility of RTAs and the WTO mechanism for settling disputes has not been used to that end. Hence, these constitute noteworthy precedents but do not give any legal guarantees in respect to the compliance of these provisions with WTO rules.

Table 2: Longer Implementation Periods Adopted in Some FTAs

Implementation period	FTA	Party(ies) concerned
12 years	EU – South Africa	South Africa only
	EU – Morocco	Morocco only
	US – Chile	Both parties
15 years	Canada – Costa Rica	Costa Rica only
16 years	Korea – Chile	
18 years	Canada – Chile	Chile only
	US – Australia	US only
20 years	Australia – Thailand	Thailand only
	New Zealand – Thailand	Thailand only

Source: Scollay (2005).

3.2 Revision of GATT rules in the Doha Round?

This recurrent uncertainty has led many to call for clarification of the rules and for their improvement, notably to address development concerns. This is now possible within the framework of the Doha Round. The Doha Ministerial Declaration provides for ‘negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements’. But the Declaration goes further, as it clarifies that ‘The negotiations shall take into account development aspects of regional trade agreements.’¹³ This provision reflects a concern among certain developing countries, ACP countries in particular, which are eager to introduce more flexibility into rules related to regional trade agreements between developed countries and developing countries.¹⁴

Unlike Article XXIV of the GATT, such flexibility for developing countries is explicitly mentioned in Article V (paragraph 3.a) of the General Agreement on Trade in Services (GATS) on agreements on economic integration in the service sector. GATS, however, does not characterise this flexibility. As a consequence, while the special and differential treatment (SDT) for developing countries is recognised for regional agreements on services, its practical scope is less than obvious.

¹³ WTO (2001, paragraph 29).

¹⁴ See ACP Group (2004), Onguglo and Ito (2005) and the discussion in Section 3.2.1.

The introduction of such an SDT clause in Article XXIV of the GATT would provide an explicit legal base to the *de facto* differentiation made in the application of this article between developed and developing countries. Its impact on the level of asymmetry in the treatment of parties to a regional agreement, in accordance with their level of development, would, however, remain unclear.

Yet, the objective of several ACP countries is to be able to limit the degree of reciprocity resulting from EPAs. This reflects a quite understandable temptation on the part of the ACP: to increase their preferential trade access to the European market as much as possible, while limiting the opening of their own markets to EU products. Or, in other words, to prevent the conclusion of North-South FTAs from putting into question the coherence of special and differential treatment within the framework of WTO and of the fundamental principle of non-reciprocity simply because Article XXIV is too restrictive.¹⁵

3.2.1 Revised rules proposed by the ACP Group

A revision of GATT Article XXIV could be crucial to guarantee that the development content of an EPA sought by ACP countries is WTO compatible. With this perspective, the ACP Group proposed an explicit revision of GATT Article XXIV in the negotiations on WTO rules for the Doha Round. Aware of the inadequacies of the current WTO rules to cater for their development concerns,¹⁶ on 28 April 2004 the ACP Group submitted a formal proposal to the WTO to introduce developmental aspects and SDT in GATT Article XXIV in order to obtain legal security for a flexible development-oriented EPA.¹⁷ The key elements of the ACP proposal are the introduction of SDT:

- into the requirement that the parties fully liberalise ‘substantially all trade’ (GATT Article XXIV:8(a)(i) and (b)) in terms of trade and product coverage, by allowing for asymmetric lower levels for developing countries (DCs) or a favourable methodology, as well as by adopting a flexible interpretation of ‘other restrictive regulations of commerce’ for DC parties (to apply safeguards and non-tariff measures);

¹⁵ ACP Secretariat (2002).

¹⁶ See Borrmann et al. (2005), Onguglo and Ito (2003) and South Centre (2005) for extensive discussions.

¹⁷ ACP Group (2004).

- with respect to the transition period for the implementation of regional free trade (GATT Article XXIV:5(c)), which should be extended for DCs to no less than 18 years;
- into the procedural requirements for notification, reporting and reviewing of regional trading agreements (GATT Article XXIV:7), with a view to facilitating these procedural requirements for DCs and giving due consideration to developmental aspects when reviewing regional agreements.

The ACP submission also proposes that the compatibility of regional trading agreements be determined only by the WTO Committee on Regional Trade Agreements, thus removing the possibility of a challenge under the WTO Dispute Settlement Mechanism, in an effort to obtain greater legal certainty.

These proposals have received mixed reactions from other WTO members.¹⁸ It is interesting, however, that the European Commission also explicitly recognises the need to incorporate some SDT in GATT Article XXIV. EC Trade Commissioner Mandelson stressed the need ‘to make sure that the WTO’s rules and their application reflect that special differential treatment, that sophistication of our approach that we are seeking, through the partnership agreements’, noting that ‘It would be really poor if we were to try to seek to negotiate something through the EPAs which was WTO plus only to find that the WTO framework of rules did not support the house we were building’ (HCIDC, 2005, Ev22, Q82). These concerns are reflected in the European Union submission to the WTO Negotiating Group on Rules on regional trade agreements.¹⁹ The EU calls for fair and equitable treatment between different forms of regional trade agreements that involve DCs, which is not the case under existing WTO rules. To remedy this situation, the WTO ‘negotiations on RTAs should aim to clarify the flexibilities already provided within the existing WTO rules on RTAs, in order to give greater security to developing country parties to RTAs to ensure that the rules facilitate the necessary adjustments’ (European Communities, 2005, para.18), particularly with regard to introducing flexibility in the determination of ‘substantially all trade’, degree of asymmetry and transition period for DCs and LDCs, the EU making an explicit reference to the submission by the ACP Group.

¹⁸ See Onguglo and Ito (2005) for a detailed discussion.

¹⁹ European Communities (2005).

The proposal to reform GATT Article XXIV has also received the support of the Commission for Africa (2005), which calls, for instance, for a transition period of over 20 years to implement EPAs if necessary, a proposal also supported by the British government.²⁰ The African Union,²¹ the LDC Group²² and NGOs have also called for a revision of WTO rules.

3.2.2 Amending the Enabling Clause?

Another option would be to revise the 'Enabling Clause' of the GATT. Indeed, this clause allows preferential regional trade agreements between developing countries, even if it only leads to a reduction and not the elimination, on a reciprocal basis, of customs duties and non-tariff measures on products.²³ Such agreements are, therefore, not subject to the discipline of GATT Article XXIV. By extending the scope of the Enabling Clause to regional agreements between developed countries and developing countries, including allowing preferential treatment for the exclusive benefit of developing countries in an asymmetric manner, the ACP countries could obtain the required flexibility and SDT to conclude EPAs. One could also imagine greater flexibility in the Enabling Clause, which would also allow unilateral preferential treatment by a developed partner in favour of developing countries (for the so-called generalised system of preferences). By allowing explicit and discretionary discrimination among developing countries by a developed partner, a revised Enabling Clause would make possible the continuation of a unilateral regime of preference by the EU in favour of the ACP countries, or at least those that would opt for an alternative to EPAs.

This option, however, is not very realistic. Indeed, such a revision of the Enabling Clause would seriously erode the principles of non-discrimination and most-favoured nation (MFN) by allowing a developed partner to arbitrarily discriminate

²⁰ See DTI-DFID (2005) and UK Government (2005).

²¹ See 'The Cairo Declaration and Road Map on the Doha Work Program' and the 'AU's Ministerial Declaration on EPA Negotiations' adopted at the African Union Conference of Ministers of Trade 3rd Ordinary Session (5–9 June 2005, in Cairo, Egypt), available on-line at www.sarpn.org.za/documents/d0001352/index.php and www.twinside.org.sg/title2/FTAs/General/AFRICAN_UNION.Cairo_Decl.doc, respectively

²² See, for instance, the 'Livingstone Declaration', Fourth LDC Trade Ministers' Meeting, Livingstone, Zambia, 25–26 June 2005, www.integratedframework.org/files/Livingstone%20Declaration_final.doc.

²³ See Decision of 28 November 1979 on 'Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries', GATT L/4903, www.wto.org/english/docs_e/legal_e/tokyo_enabling_e.doc

among developing countries²⁴ while avoiding the more rigorous discipline of GATT Article XXIV, which justifies RTAs, raising serious systemic issues in regard to WTO rules. As a consequence, such a reform is likely to arouse the strong opposition of many WTO members, including among developing countries.²⁵

3.2.3 The dynamics for changes in the Doha Round

Under the current political climate, it appears unlikely that fundamentally new rules will be introduced at the WTO. Not only is this not a priority for many leading WTO members (including among developing countries), but it also entails complex systemic issues. Far-reaching reforms of GATT Article XXIV to allow FTAs with limited or no reciprocity would seem to go against the core (i.e., the *raison d'être*) of this article and, more broadly, the concept of FTA itself. While discussions on 'substantially all trade' centre around the degree of reciprocity, an FTA (or a customs union) that would only very partially liberalise trade would appear to most lawyers and economists as a contradiction in terms. In other words, while flexibility in the provisions of GATT Article XXIV can be envisaged (e.g., in terms of asymmetry in the scope, coverage, transition period of the agreement), the extreme case of little to no reciprocity would seem to defeat the purpose and intent of GATT Article XXIV. Advocates of a non-reciprocal preferential trade regime by the EU for the ACP are thus unlikely to find comfort in a reformed Article XXIV of GATT.

The logical alternative would thus seem to be a reform of the Enabling Clause, which is dedicated to derogating the non-discriminatory and most-favoured nation (MFN) principles for developing countries, under loosely defined conditions. It remains to be seen whether the approach taken by the WTO Appellate Body against arbitrary discrimination can be overturned in the context of the Doha negotiations on rules. But the resistance by some WTO members, including developing countries (such as India in the context of the EU GSP dispute, Brazil in the dispute over the EU sugar regime, Costa Rica in the banana dispute, etc.) and the

24 The decision of the Appellate Body of the WTO in the case of India vs. EU (WTO, 2004) recognises the possibility for a developed WTO member to differentiate among developing countries in its preferential trading regime (in this case, the EU GSP) but only if the differentiation is based on transparent and objective development-related criteria. This is obviously not the case for the ACP group of countries, which are a geographically differentiated group of developing countries whose justification lies in their historical ties with the EU.

25 See Onguglo and Ito (2002) and the proposal by Paraguay to WTO, TN/CTD/W/5, http://docsonline.wto.org/gen_search.asp

difficulties that the EU encountered in obtaining a new waiver in 2001 for the continuation of the Lomé/Cotonou preferences until 2007, suggest that reforming the Enabling Clause to cater for the perpetuation of non-reciprocal preferences for ACP countries will not be an easy task, if it is possible at all.

As argued in Section 5.2, EPAs, irrespective of their specific content, can therefore be considered to have to comply with Article XXIV of GATT, either in its current format or slightly modified, but in any case in conformity with the existing basic WTO principles for the formation of an FTA: liberalisation of substantially all trade within a limited timeframe. Should an EPA not be signed, any alternative to an EPA will have to comply with the Enabling Clause or will require a waiver (i.e., derogation) from WTO rules, to be agreed upon by all WTO members.

The question remains, however, as to which specific rules EPAs or any alternative must comply. Since negotiations under the Doha Round are continuing and little progress on rules has been achieved, and the EPA negotiations are conducted in parallel, the precise legal framework for the ACP remains uncertain. It is clear that should the Doha Round be completed before the conclusion of a new ACP-EU trade regime (EPA or alternative) by 2008, any ACP-EU agreement will have to be adjusted to comply with the WTO rules applying at the time. However, what would the situation be should the Doha Round be extended beyond 2007, that is, after the conclusion of EPAs or alternatives? Initially, the new ACP-EU trade regime will have to be compatible with the current WTO rules, which will still prevail in 2008. But if the WTO rules were later to be modified at the conclusion of Doha Round, should the new ACP-EU trade regime be adjusted again? No clear answer can be provided at this stage, which is surely an unfortunate source of uncertainty.



Chapter 4

The debate over EPAs



4 The debate over EPAs

The debate over EPAs has, since its inception, centred on their merits, in particular in terms of development. While several attempts have been made to quantify the impact of EPAs, mainly from an economic perspective (as reviewed in Section 4.1), opinions and approaches still strongly diverge on the benefits of EPAs and the type of EPAs that could be effective tools for development (Section 4.2). As a result, alternatives to EPAs have attracted different kinds of attention (Section 4.3).

4.1 Impact assessments

Since the European Commission proposed in its 1996 Green Paper the introduction of reciprocity into ACP-EU trade relations, in the form of EPAs, to replace the unilateral trade preferences granted to the ACP under the Lomé Conventions,²⁶ one of the main issues of contention has been the likely effects of EPAs, particularly on the development of ACP countries. While most of the arguments have rested on general principles and casual examples,²⁷ some attempts have been made to quantify the economic impact of these envisioned free-trade agreements on the ACP.

In 1998, to coincide with the start of the negotiations between the EU and the ACP on a successor agreement to Lomé IVbis, the EC had already contracted six studies for six ACP regions: SADC (excluding South Africa), EAC, UEMOA (plus Ghana), CEMAC, CARICOM (plus the Dominican Republic) and the Pacific ACP countries.²⁸ These studies have unfortunately not been made publicly available, arguably because their methodology was criticised by the EC and their results were generally unfavourable to EPAs. With the launch of the EPA negotiations, the demand for estimates on the potential effects of EPAs increased. Official impact studies have been carried out for most of the ACP regions that have entered EPA negotiations²⁹ and many ACP countries.³⁰ However, with few exceptions, these studies have not been made publicly

26 European Commission (1996).

27 See Sections 4.2 and 4.3.

28 The six studies are CERDI (1998), CREDIT (1998), IDS (1998), IMANI (1998), NEI (1998) and Planistat (1998). For an overview, see Bilal (2002), European Commission (1999) and McQueen (1999).

29 With the notable exceptions of the Caribbean and Pacific.

30 Most of these studies have been financed under the ACP EPA Project Management Unit (PMU) established by the ACP Secretariat and the European Commission to administer the € 20 million programme for capacity building in ACP countries and regional economic groupings.

available either. Finally, a number of other impact studies have been carried out by independent experts, research centres and civil society organisations.

4.1.1 Impact studies on EPAs focus on trade

This section provides a brief overview of some of the key results in some of the available studies that have attempted to provide a quantitative assessment of the economic impact of EPAs. All the studies reviewed tend to suggest that EPAs will have a significant impact on ACP economies, but their estimates vary widely across regions, countries (including countries from the same region) and studies.

For reasons mainly due to methodological constraints and the limited availability of data, impact studies have focused primarily on trade effects, their direct impact on government revenues and, for some, welfare effects (resulting from trade liberalisation). The productive sector, for which information for ACP countries is generally not readily available, has been ignored. These studies can therefore not assess the expected outcomes of EPAs in terms of competitiveness, employment or economic growth, which constitute some of the 'dynamic' effects of trade liberalisation.³¹ This is a major shortcoming, since most of the anticipated impact of EPAs on development should come from these dynamic effects.

Assessments of EPAs that have attempted to identify these broader economic effects and include the evolution of the economic system following the adoption of an EPA are generally not based on quantitative analysis but on qualitative investigations of specific economic sectors.³² Similarly, the identification of the likely social impact of EPAs requires an approach different from those generally adopted in impact studies.³³

4.1.2 What can we learn from these impact studies on EPAs?

So, what do these impact studies on EPAs tell us? (Key results are presented in the Appendix.)

31 Only a few studies discuss the dynamic effects. One of them, UNECA (2005a), analyses the impact of EPAs on production, employment and demand in regard to factors of production. However, due to data limitations, this exercise has only been undertaken for Sub-Saharan Africa as a whole and not for single ACP regions or individual countries.

32 See, for instance, Eurostep (2004) and PricewaterhouseCoopers (2005).

33 Such assessments would require better and/or more disaggregated data or sectors, or would have to rest on a qualitative assessment.

First, EPAs are expected to have a significant effect on trade flows for the ACP. This comes as no surprise, since for most ACP countries, the EU is a major, when not the main, trading partner. Trade liberalisation towards the EU should then increase EU exports to the ACP.³⁴

Second, all recent studies indicate that EPAs will create more trade than they will divert.³⁵ Trade creation is the trade resulting from the lowering of trade restrictions in an RTA, which generates imports from more efficient producers in partner countries. That is, trade creation would occur, for instance, when EU imports replace less efficiently produced domestic ACP products as a result of the elimination (or lowering) of the trade barriers in an EPA. In contrast, trade diversion is the trade resulting from the preferential treatment granted to partners, with discrimination against more efficient producers that are not party to the agreement. That is, trade diversion would occur, for instance, when the trade liberalisation under an EPA would lead an ACP country to switch its imports from a relatively efficient, low-cost producer in a third country in favour of imports from a less efficient, higher-cost producer in a country that is a partner in an EPA (e.g., the EU) simply because the trade barriers for the imports within the EPA zone are lower than those for outside competitors. In terms of the efficiency of resource allocations, trade creation is more desirable than trade diversion. Results presented in the Appendix reveal that the size of trade creation and diversion, and their ratio, vary greatly from one country to another, including within the same region. Note that even with the predominance of trade creation over trade diversion, significant adjustment costs may be expected from increased imports at the expense of less competitive domestic producers.³⁶

Third, all studies also agree on the importance of the loss of tariff revenues due to the lowering of trade barriers in an EPA. Since many African countries are dependent on import duties to generate fiscal revenues, several studies warn about the impacts on government spending these revenue losses may have, because govern-

34 Conversely, since the EU market is already mostly open to the ACP countries (see footnote 1), the removal of customs duties under an EPA should have only a limited effect on ACP exports to the EU. Note that since ACP exports to the EU represent only a minor share of EU imports anyway (around 2%), impact studies have focused on the effects of an EPA solely on the ACP economies and not the EU.

35 Note that the impact studies contracted by the EC in 1998 reached an opposite conclusion, with more trade diversion than creation in most regions (see McQueen, 1999).

36 As the impact studies on EPAs do not consider the productive sector, however, such costs of adjustments or other competitive effects have not been estimated.

ments, if unable to mitigate the loss by raising revenue in other ways, will be forced to cut spending. This could put government social programmes at risk.

Indications on the welfare effects of EPAs are scarce and incomplete in the few studies that have attempted to estimate them. UNECA (2005a,b,c,d,e) and CAPE (2003), for instance, provide some indications that ACP consumers could gain from the lower prices resulting from trade liberalisation (which increases the 'consumer surplus'), but this gain is generally low (when compared, for instance, to the loss of tariff revenues). UNECA (2005a) also notes that ACP producers would lose out as a result of EU imports supplanting domestically produced goods (reducing the 'producer surplus'). The only attempt to capture some of the more general (i.e., dynamic) effects of an EPA, taking the international economy into account, was undertaken by Keck and Piermartini (2005). They suggest that an FTA between SADC and the EU is, overall, welfare enhancing, although it would not benefit all countries. The EU-15 and South Africa would gain the most, whereas Botswana and Tanzania (as well as third countries) could see their welfare reduced (see Table A4b in the Appendix).

Overall, the studies reviewed all seem to indicate that while EPAs certainly present opportunities to individual ACP countries, they also constitute significant challenges. The size of the reported impact tends to vary, depending on the methodologies used and on the region considered. Moreover, not only does the impact vary between regions, it also seems to vary between countries within the same region. This conclusion reaffirms the high levels of heterogeneity in the regions and the need for differentiation between countries within the regional partnerships.

4.1.3 Differing results and methodological weaknesses

The differences among studies in the estimates for each country/region are mainly due to the methodology adopted for the empirical analysis and the availability and quality of data. Important variables used in the models, like exchange rates and trade volumes, are known to be very volatile and difficult to estimate with precision, especially for developing countries. Therefore, estimates from different studies can already vary significantly due to differences in the exact point in time the data were

gathered. Also, data are often lacking for individual sectors or countries, making any estimates more uncertain. Another reason for the differences in results is the underlying assumptions of the liberalisation process. Some studies adopt a scenario of gradual liberalisation while others simulate immediate liberalisation. Assumptions about the scope of liberalisation (e.g., 100%, 80%, 50%) and product coverage also significantly affect the results. In addition, the choice of variables (which can vary across the studies) can have an impact on the results of the analysis. For instance, the definition of tariffs used (e.g., bound or applied) has a significant impact.³⁷ Similarly, the way tariff revenues are estimated (e.g., whether the effective rate collection is taken into account) has major consequences on the results obtained.³⁸

What is perhaps even more critical is that by focusing only on the direct trade effects of an EPA—without considering trade-related matters, possible accompanying policies and measures, adjustment costs and other broader (i.e., dynamic) effects on ACP economies—these impact studies provide only a partial assessment of the ultimate impact of EPAs.³⁹ Hence, although they have generated some useful information on some of the potential effects of EPAs, these studies have not been able to determine their contribution to the development of ACP countries.

In the context of this Study, it is important to note that estimating the economic impact of possible alternatives to EPAs or alternative EPAs is, for all the reasons discussed above and others (see Section 7.1), a most challenging and uncertain task. Therefore, the following sections of this Study will mainly provide a qualitative discussion of the impact of alternative scenarios.

4.2 The development objectives of EPAs

Everybody agrees: EPAs should be first and foremost about development. By facilitating the integration of the ACP countries into the world economy and building on regional integration initiatives, EPAs should stimulate economic development

37 For instance, Tekere and Ndlela (2002) use WTO-bound tariffs in their SADC study, which leads to much larger estimates than those of UNECA (2005a,c), where applied tariff rates are considered instead.

38 Only Busse et al. (2004) take the actual revenue collection of the ECOWAS countries into account; other studies only compute the revenue by multiplying the official duty (sometimes even the bound tariff, as opposed to the actually applied one) with the value of imports.

39 For a summary of the issues surrounding trade impact assessments, notably in regard to the methodological merits and shortcomings of static and dynamic models for trade policy, see Piermartini and Teh (2005).

and export growth, thereby contributing to sustainable development and poverty alleviation.

In Article 20, the Cotonou Agreement provides the overall framework that should guide the cooperation partners in attaining these developmental objectives:

The objectives of ACP-EU development cooperation shall be pursued through integrated strategies that incorporate economic, social, cultural, environment and institutional elements that must be locally owned. Cooperation shall thus provide a coherent enabling framework of support to the ACP's own development strategies, ensuring complementarity and interaction between the various elements.... (Art. 20)

The same developmental approach also characterises the 'Economic and Trade Cooperation' pillar of the CPA, as clarified by its specific objectives:

Economic and trade cooperation shall aim at fostering the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries. (Art.34.1)

These objectives are not only stated in the Cotonou Agreement, but have been restated numerous times by the European Union (its institutions and member states), the ACP regions and countries, and various actors from civil society:

EPA is not an end in itself, but a tool for development. (Miller, 2005)

EPAs must be designed to deliver long-term development, economic growth and poverty reduction in ACP countries. (DTI-DFID, 2005)

EPAs should no longer be conceived as trade agreements in the conventional sense where both sides are seeking mutual advantage. The EU is not pursuing an equal bargain in relation to our EPA partners. The purpose of EPAs is to promote regional integration and economic development. (Mandelson, 2005)

Similarly, all parties recognise that the new ACP-EU trade arrangements will not promote development unless the capacity of the ACP countries is substantially enhanced: not only the capacity to prepare and implement EPAs but especially the capacity to produce and trade. Without adequate policies and resources to adjust to and foster the necessary economic transformation and to produce and market their goods competitively, ACP countries are unlikely to fully benefit from a free-trade agreement with the EU:

Growth will only result if the opportunity to trade is combined with the necessary capacities to participate in trade . . . what Europe can do: Introduce a much stronger development focus into Economic Partnership Agreements; New mechanisms for monitoring the effectiveness of development assistance within the EPAs; Better coordination of Europe's overall aid effort between the EU and Member States; Greater transparency on Europe's trade and development record. (Mandelson, 2005)

[Neither] [t]rade nor market access by themselves are sufficient to promote development. Countries suffering from capacity constraints and institutional inadequacies will not be able to make the best use of market access, even under preferential terms. (Miller, 2005)

In principle, development is the objective for all. Three years after the start of the negotiations (in September 2002), one would have expected an emerging consensus between the parties on the practical way forward to integrate the development dimension into EPAs. Yet, on the eve of substantive negotiations on the content of EPAs, sharp differences prevail on the approach to development in the context of the negotiations, creating tensions and frustration among the parties.

4.2.1 EU perspective

The EU maintains that EPAs will foster development mainly through trade liberalisation and the creation of the right policy framework for liberalisation and to attract investment.⁴⁰ By creating free-trade areas among themselves and with the EU, the ACP countries will benefit from the standard gains from trade, fostering economic growth and hence development: increased market access to the EU and

40 For most recent references, see Dihm (2005) and European Commission (2005c).

other ACP countries in their region for ACP exports, and economies of scale for ACP producers; reduced prices of imports for ACP consumers; and associated competitive effects. This section of the Study presents the main arguments used by the European Commission and, in particular, the Trade Directorate General (DG Trade) to show that EPAs are the best tool for development of the ACP countries.

Reciprocity

The most innovative element of EPAs is the establishment of FTAs, which will progressively abolish substantially all trade restrictions among all the parties (CPA Art 37.7).⁴¹ Hence, for the first time in ACP-EU trade relations, ACP countries will have to open up their own markets to EU products, on a reciprocal basis, in order to retain their preferential access to the EU market. The rationale for reciprocity rests on the principle that liberalisation of ACP markets towards the EU is expected to increase competition within ACP economies, reduce prices for consumers and stimulate investment as well as the transfer of technology and knowledge. This should foster the necessary structural adjustments of the ACP economies (from simple extractive to more value-added activities) and increase their competitiveness, thereby leading to more efficiency and economic growth. From the EC perspective, the reciprocity of commitments to liberalisation (often perceived as the more serious risk for ACP countries) is also a key development aspect of EPAs.

Regional integration

In addition, by building on the ACP regional integration (RI) processes, EPAs should contribute to the establishment of effective regional markets in the ACP, thus attracting and stimulating both domestic and foreign investment, a necessary condition for sustainable development. The EU has a clear policy of advocating regionalism as a step towards multilateralism, and the EU also encourages developing countries to establish regional trade blocs, just as Europe did.⁴² The EC often refers to Europe's own experience with RI and its benefits when discussing EPA-related issues. This is not only in regard to the economic advantages of RI but also in terms of the opportunities RI would offer against the risks of liberalisation. The EC argues, for instance, that Europe, like the ACP regions, also had different levels of development among member states, and special mechanisms were established by

41 That is, within each regional EPA, free trade should prevail between (1) the EU and the ACP region, as well as (2) among all the ACP countries in the regional EPA.

42 See, for instance, European Commission (2003, p.13).

the EU to address those inequalities; ACP countries should therefore not fear the regional integration fostered by EPAs.

Additional benefits: behind-the-border measures, services and credibility

In the view of the EC, the positive effects from reciprocity and regional integration will be reinforced by several elements. First, EPAs will not only address tariff barriers, but also non-tariff and technical barriers to trade, as well as a number of trade-related 'behind-the-border' measures (such as trade facilitation, competition, investment, etc.). This broad coverage should provide greater, more effective market access and market integration, thus increasing the benefits from trade. Second, EPAs will not only cover trade in goods and agricultural products, but also in services, possibly beyond the provisions currently negotiated at the multilateral level through GATS. For some ACP countries, this would be of key importance because services constitute an increasingly significant sector of their economies and present a possible engine for further economic growth in the future: the provision of efficient services decreases the costs of all economic activities. Third, with their comprehensive coverage, EPAs should contribute to locking in policy reforms in the ACP, thereby increasing the relevance and credibility of the regional integration process of the ACP regions, as well as facilitating their integration into the world economy.

Parallel development cooperation

It is important to note that the mandate that the EC received from the European Council to negotiate EPAs does not include the negotiation of development cooperation, which is a separate, though related, aspect of the ACP-EU partnership.⁴³ Negotiations for establishing EPAs take place in the context of the CPA, which comprises trade and economic cooperation as well as two other pillars, namely, political relations and development cooperation. The EC maintains therefore that although EPA negotiations should indeed focus on trade matters, the Cotonou framework offers ACP countries a chance to identify a parallel development component to accompany the elaboration and implementation of EPAs. EPA negotiations should thus be accompanied by discussions on the development assistance available to the ACP (currently under the European Development Fund), as well as possible complementary support by other donors. To facilitate this process, region-

43 See European Commission (2002).

al preparatory task forces (RPTFs) have been set up, outside but closely linked to the formal setting of EPA negotiations. Comprising development officials and experts from both the EC and the ACP region concerned, their aim is to 'cement' the strategic link between the EPA negotiations and development cooperation. In particular, they should contribute with (innovative) ideas for cooperation activities, help in the identification of sources of assistance required for EPA-related capacity building and facilitate the efficient delivery of such support. Despite views from some ACP stakeholders and European NGOs that the link between trade and development should be made tighter than it is at present, including through binding language in the new partnership agreement, the EC's position, as outlined above, leads to the conclusion that such tighter (binding) link will not be accepted by the EU as an integral part of EPAs (unless the mandate for the EC were to be amended in that direction).

Decision-making on trade and development

Despite the fact that, from the European perspective, development cooperation acts in parallel to EPAs and is not a subject for formal negotiations, the development dimension of EPAs is also reflected according to the EU in its internal decision-making processes. First, although DG Trade leads the EPA negotiations, EC membership on the RPTFs includes officials from DG Trade, DG Development, AIDCO and EU Delegations,⁴⁴ which would ensure full input from development experts. Second, according to some EC officials, the coordination between different EC services is improving throughout the negotiations (including in existing CPA instruments for multi-annual programming, like RIPs and NIPs) and could contribute to achieving the development aspects of EPAs. Finally, the EU is planning to establish 'new mechanisms for monitoring the effectiveness of development assistance within the EPAs'.⁴⁵

It is important to note that some EU Member States are increasing pressure on the European Commission to ensure that the development objectives of EPAs can be realised, possibly as a consequence of the international debate on EPAs and the visibility of the 'Stop EPA Campaign'. In March 2005, for instance, the UK government issued a statement calling for EPAs to be designed to deliver long-term develop-

44 See, for instance, the case of the Cariforum-EU EPA negotiations: www.crnw.org/documents/press_releases_2004/pr1004.htm

45 Mandelson (2005).

ment, economic growth and poverty reduction in ACP countries and challenging the EC's negotiating position in several areas.⁴⁶ It calls, inter alia, on the EU to ensure that the ACP makes its own decisions on the timing, pace, sequencing and product coverage of market opening. There are indications that other EU Member States are working on similar positions and that there may be a like-minded group of EU Member States that will work to increase the development scrutiny of EPA negotiations. This may have been reflected, for instance, in the recent decision of the General Affairs & External Relations (GAER) Council requesting the EC to submit a report on the state of play in EPA negotiations.

4.2.2 ACP perspective

From an ACP perspective, to be of benefit, EPAs must be 'economically meaningful, politically sustainable and socially acceptable'. While most of the ACP states would agree with the EU on the development opportunities entailed in an EPA, they tend to consider trade liberalisation and regional integration as necessary yet far from sufficient conditions to fostering development and alleviating poverty. In other words, creating large open regional markets and increasing export opportunities for the ACP are only factors of potential development, which require additional conditions if they are to be beneficial. This section summarises some of the main concerns of ACP stakeholders on the current status of EPA negotiations, drawing from official statements by and informal discussions with ACP officials over the last few months. The 'Declaration of the 81st Session of the ACP Council of Ministers' on the progress in EPA negotiations (Brussels, 21-22 June 2005)⁴⁷ (from now on referred to as 'The Declaration') is of particular interest as it probably represents the most explicit and strongest public statement of concern ever expressed by the ACP Group on EPAs. Paragraph 1 of the Declaration states that ACP Ministers:

Express grave concern that the negotiations have not proceeded in a satisfactory manner having failed to start addressing most issues of interest and concern to the ACP regions, in particular the development dimension and regional integration priorities.

⁴⁶ DTI - DFID (2005).

⁴⁷ ACP Council of Ministers (2005).

It is also interesting to report here a more recent comment by the Secretary General of the ACP, putting the same concerns in the context of the negotiating strategies of the two parties and their offensive/defensive interests:

It has become quite clear from our frank discussions that the two years of regional negotiations have generated very little tangible outputs particularly as related to the two areas of critical interest to the ACP regions and countries. On the one hand, this was an expected outcome as we already stipulated that the EC push for regional negotiations at an early stage was designed to water-down what was then emerging as strong offensive interests of the ACP States – namely the development dimension of EPAs and the support for regional integration processes. Now that we have come to a realisation that our two key offensive interests will not be entertained adequately by the EC negotiators, it is incumbent upon us to agree on a bold strategy to further pursue our interests. (Sir John Kaputin, 2005)

Reciprocity

The ACP governments do not reject altogether the principle that reciprocity of commitments to liberalisation can be beneficial through increased competition within ACP economies, reduced prices for consumers and, possibly, attraction of investment as well as transfer of technology and knowledge. However, the ACP stakeholders have focused their attention on the possible risks of liberalising ACP markets towards the EU.⁴⁸ The ACP States have continuously stressed that high adjustment costs may seriously mitigate, and even negate, the benefits from market liberalisation through an EPA. These adjustment costs include fiscal reform to face the loss of import revenues,⁴⁹ adjustment measures for loss of competitiveness and restructuring of domestic industries, institutional development (to address issues such as compliance with food and safety standards, simplification and harmonisation of customs procedures, regulatory developments, etc.), support to develop the supply capacity necessary to benefit from increased market access, etc.

⁴⁸ In an AU Trade Ministers meeting, June 2005, the Ministerial Declaration stated that the so-called 'Singapore Issues' should remain outside of the EPAs.

⁴⁹ See Baunsgaard and Keen (2005), who found that low-income countries 'have recovered, at best, no more than about 30 cents of each lost dollar'.

In a forthcoming study to be published by the Commonwealth Secretariat, partial elements of the adjustment costs to EPAs have been given a preliminary estimate of at least € 9 billion for all the ACP. To face the burden of economic restructuring and export diversification, while adjusting to the fiscal fallout from reduced tariffs, ACP stakeholders often call for special and differential treatment (SDT) as well as specific support measures to complement EPAs.⁵⁰ SDT should be an integral part of all components of an EPA, starting from market access (product coverage, treatment of sensitive products and commodity protocols, safeguard measures, length of transitional periods) and including asymmetry in ACP and EU commitments as well as differentiation among ACP States according to their development levels. Additional resources for support measures will also be required in terms of fiscal reforms to offset loss of customs revenues, compensation for producers and consumers who will suffer from economic restructuring, and strengthening of social safety nets. The need to mitigate the negative effects of reciprocity and the subsequent flexibility required in the different types of commitments was also reaffirmed recently by the ACP Ministers:

Emphasizes that each ACP State and Region should be allowed to make its own decisions on the timing, pace, sequencing, and product coverage of market opening in line with individual countries' national development plans and poverty reduction strategies. (Paragraph 12 of 'The Declaration')

Regional Integration

Several officials from the ACP regions confirmed that, in the preliminary discussions on regional integration in the context of the EPA negotiations, the EC strongly promoted its own approach to the regional integration process, based on the EU experience (as already mentioned in Section 3.2.1). However, ACP regions emphasise that, instead of attempting to reproduce the EU experience, they should follow their own regional integration process, often based on flexibility, differentiation and variable geometry.⁵¹ For each ACP region, the emphasis in EPA negotiations should thus be on the synchronisation of self-determined regional priorities within the scope and process of EPA negotiations, rather than on incorporating in each regional integration process a standard EU agenda for EPAs, derived from the par-

50 See, for instance, the case of the Caribbean: www.crnw.org/acp.htm

51 As in the case of the Caribbean, for instance; see www.crnw.org/acp.htm

ticular EU experience. There is a possibility that the ACP regional integration process might not have sufficiently matured in all fields to allow EPA commitments to be assumed for a specific region as a bloc. EPA tariff reductions, for instance, would not necessarily take the form of liberalisation of a common external tariff (CET) if the ACP countries in a certain region required more time to establish a customs union than that provided by the CPA framework.

Additional benefits: building up capacities

The ACP governments do not question the fact that elements that reinforce reciprocity and regional integration (like non-tariff barriers, ‘behind-the-border’ measures and services) will bring additional positive effects from EPAs, as suggested by the EC (see Section 3.2.1). However, they would like EPA negotiations to concretely address the serious capacity problems of the ACP first: capacity to negotiate/implement EPAs, to produce and trade competitively to reap their benefits, and to face their adjustment costs. Addressing these effectively and as a matter of priority is what many among the ACP would term the ‘additional benefits’ of an EPA. ACP economies need to have the capacity both to benefit from increased market access (notably in the EU) and to face greater competition domestically. Trade liberalisation should thus be accompanied by development support to address supply-side constraints, including strengthening the infrastructure, as well as related institutional and structural weaknesses. This support should be determined by and synchronised with the processes of negotiating and implementing an EPA. That is, the nature and size of support should be commensurate to the adjustment process required, in line with ACP development objectives and regional priorities.

Proper sequencing of liberalisation commitments and implementation with development support is also of prime importance. Trade-related assistance should indeed be timely and efficiently delivered so as to coincide with the needs and challenges faced by the ACP. For certain regions and countries, this could mean that specific components of such trade-related assistance might need to come before the implementation of trade liberalisation (for example strengthening of tax collection/administration systems where revenue shortfalls due to tariff reduction are expected to be particularly serious). The need for capacity building at all levels was well captured in the ACP Ministers’ Declaration on EPAs, which also called for

the establishment of development benchmarks to ensure that EPAs deliver on sustainable development:

Urges the EC to support the ACP Group in its quest to implement measures to transform their economies, including by enhancing competitiveness, fostering regional integration, upgrading infrastructure, improving investment and building supply side, human and institutional capacities; (Paragraph 10 of ‘The Declaration’)

Emphasizes that there is urgent need to clearly define the development dimensions of EPAs; indicating the amount of resources that could be available to the ACP States and regions to address supply side constraints and consider how anticipated revenue losses incurred as a result of liberalisation will be addressed; (Paragraph 7)

Calls for the establishment of development benchmarks, on the basis of the Cotonou Agreement and the eight MDGs and 18 targets established in the Millennium Declaration on MDGs, against which to assess the conduct and outcome of the EPA negotiations in order to ensure that trade liberalisation works in favour of sustainable human development. (Paragraph 13)

Commitments to development cooperation

As shown in Section 3.2.1, from the EC perspective, EPA negotiations should only be *accompanied* by discussions on the development assistance available for the ACP since development cooperation is a parallel component to EPAs. The ACP Group, instead, sees the provision of resources to build up capacities in the ACP through development support as intrinsically linked to EPA negotiations and believes the two should not be artificially disconnected. Securing such a strategic (and binding) link between EPA negotiations and Cotonou development assistance may require a revision of the mandate for negotiation that the EC received from the European Council, and some of the recent statements by ACP Ministers could point in that direction:

Calls on the EU to seriously consider the numerous concerns expressed by the ACP Group and in this regard request the EU to adjust its negotiating directives as appropriate. (Paragraph 14 of ‘The Declaration’)

The ACP negotiators are aware that their request for additional resources should not be a vague demand for more aid, unrelated to specific needs. They recognise the importance of properly calibrating an estimate of the adjustment costs required for the preparation, negotiation and implementation of EPAs to be used in discussions with the EU. On the other hand, independent from the final decision on whether development cooperation will become a component of EPAs or will be taken forward separately, ACP negotiators note that the current development support mechanisms under the Cotonou Partnership Agreement are not adequate to face the development challenges of EPAs. Improving procedures for delivering the assistance is therefore as important as providing an appropriate level of support. Timely disbursement of funding and effective delivery of assistance will affect not just the proper negotiation of EPAs, but especially the capacity to implement any agreement. This has been a key request from the ACP side since the beginning of the negotiations, as expressed, for instance, by the Ministers of the African Union (AU):

To this end, CALL on the EU to commit commensurate resources, additional to EDF, which are directly and swiftly available to ACP States as a budgetary support through a fast track disbursement regime. (Paragraph 7 of the Mauritius Declaration on preparations for EPA negotiations [AU Trade Ministers, 19-20 June 2003])

Decision-making on trade and development

Not only do ACP governments feel that current EPA negotiations do not include those elements required for economic development and export growth to actually occur, they also believe that the joint ACP-EU mechanisms (as well as the internal EU decision-making processes for trade and development) in the context of EPAs could be greatly improved. First, the ACP States complain about an increasing dichotomy between the political rhetoric at the EU level, where the pro-development component of EPAs is repeatedly emphasised, and the pragmatic approach adopted by EC trade negotiators, who focus on a narrower definition of development based mainly on trade-related gains, thus avoiding, according to some ACP negotiators, substantive discussion on the broader development dimension of EPAs. Indeed, at the highest levels, the EC has been reaffirming the central development objective of EPAs, stating its willingness to be flexible in allowing the ACP to define trade provisions and support needs and promising to ensure coherence

in EU and WTO policies and rules to work in the interests of ACP countries.⁵² However, ACP diplomats feel that EC trade negotiators refuse to explicitly take into consideration adjustment costs and other support measures in the negotiations. And this is the second weakness of the decision-making around trade and development: these key issues are left for the ACP to deal with, only in the context of the parallel RPTFs. These are not part of the trade negotiations and therefore have no binding power on the negotiators. Hence, not only do the ACP regions regret the de facto sidelining of DG Development officials in the EPA negotiations, but the regional ACP negotiators apparently fail to see the political commitments made by Development Commissioner Louis Michel and even Trade Commissioner Peter Mandelson translated in the approach and content of the negotiations led by DG Trade officials. Finally, the ACP would like the 'EPA monitoring mechanism' (often referred to by Mr Mandelson) to be made operational urgently, especially since the formal Joint Technical Monitoring Mechanism agreed in Phase I only met once and produced a simple report without any follow-up. Concerns over the lack of effective mechanisms to address adjustment costs and development support related to EPAs, as well as the perceived dichotomy between the flexible EU political discourse and a more rigid approach by EC negotiators, were expressed by the ACP Council of Ministers and even more explicitly by the CARIFORUM Ministerial Spokesperson on EPAs:

Regrets the disconnect between the public statements of the Commissioners of Trade and Development on the development aspect of EPAs and the actual position adopted during EPA negotiating sessions; calls on the Commission to ensure consistency and coherence in their trade and development policies (Paragraph 6 of 'The Declaration')

Calls on the Commission to agree jointly with the ACP on the modalities for the Monitoring Mechanism it has proposed to ensure that the EPAs deliver on development. (Paragraph 17).

The EU Commissioners responsible for Trade and Development Cooperation, Peter Mandelson and Louis Michel respectively, have been promoting the EPA as a tool for

52 See <http://trade-info.cec.eu.int/doclib/html/121094.htm>, http://europa.eu.int/comm/commission_barroso/mandelson/speeches_articles/temp_mandels_speeches_en.cfm?temp=sppm013_en and www.publications.parliament.uk/pa/cm200405/cmselect/cmintdev/uc390-i/uc39002.htm

addressing supply-side constraints and institutional shortcomings in the Region. The results so far have been less than convincing. Resources that could be directed at addressing these constraints have not been delivered by the European Commission, and in this regard it is expected that CARIFORUM Trade Ministers will express their skepticism and deep disappointment forcefully to Commissioner Mandelson. (Miller, 2005)

To conclude, it is worth noting that there is satisfaction within the ACP group regarding the increasing pressure being put on the European Commission by some EU member states for a strong development dimension in EPAs. This satisfaction was expressed in the June ACP Council Declaration⁵³ and, more recently, during a hearing on EPAs in the European Parliament's International Trade Committee in September 2005. The chairman of the ACP Ambassadors' Trade Committee, Namibian Ambassador Katjavivi, noted that several EU Member States seem to understand ACP concerns about the need for more developmental support to address supply-side needs and to provide sufficient transition periods for liberalisation.

4.2.3 The 'Stop EPA Campaign'

In 2004 a vast coalition of NGOs from European and ACP countries launched the 'Stop EPA Campaign', as they believe that EPAs in their current form present high risks and are not development-friendly.⁵⁴ These NGOs share the developmental concerns of ACP governments and negotiators, as outlined above, but go further in their critique to the EU approach to EPAs. According to the 'Stop EPA Campaign', the creation of a free-trade area between countries with such different development levels would disrupt local production and government revenues, create unemployment and impose liberalisation of services and investment regimes, ultimately increasing poverty rather than reducing it. In fact, some NGOs claim that the ACP have strong reservations about EPAs; the ACP countries would only negotiate out of fear of losing market access preferences and/or EDF funds altogether. Moreover, CONCORD and other NGOs claim that in their current form, EPAs will undermine the regional integration efforts of the ACP because EPAs will put the LDCs, which already benefit from generous trade preferences (through the EBA), in a dilemma

53 Paragraph 3 'welcomes the decision of the GAER Council requesting the EC to submit a report on the state of play in the EPA negotiations'.

54 See www.stopepa.org

vis-à-vis the non-LDC countries in the region. Joining an EPA could mean that the LDC members give up EBA preferences, while, according to CONCORD, gaining a lot of obligations and little benefit in return. NGOs are therefore lobbying for a radical change in the approach towards ACP-EU trade cooperation, away from the current EPA format and the focus on trade and investment liberalisation, calling instead for the principle of non-reciprocity commitments, the protection of national and regional ACP markets, and respect for the required ACP policy space⁵⁵ to pursue development-oriented policies. Some NGOs have further advocated the use of explicit development benchmarks to ensure that the implementation of different components of EPAs is conditional to the achievement of related development objectives.⁵⁶

The fundamental criticism of the EU's positions in EPA negotiations by the 'Stop EPA Campaign' is well summarised in the paper 'Six Reasons to Oppose EPAs in Their Current Form'. This document presents the EU's arguments for a development-friendly EPA as 'myths' and outlines why they should be dismissed:

- Myth 1: EPAs are about development. Trade liberalisation does not automatically lead to positive development effects and the negative outcomes of reciprocity for the ACP will offset any positive impact from EPAs.
- Myth 2: The multilateral trading system is the hallmark of EU external policy. Through EPAs, the EU risks seriously damaging the multilateral trading system because EPAs divert international attention from the WTO. Moreover, EPAs overload the ACP trade agenda and reduce resources to weak ACP institutions dealing with numerous trade negotiations. Finally, the EU has so far shown little coherence in the two negotiating fora.
- Myth 3: ACP governments want EPAs. ACP countries have clearly and regularly expressed their reservations about EPAs in the form currently being proposed by the EU. European institutions should not take it for granted that EPAs are the only solution to the ACP's developmental problems and should therefore necessarily be taken forward.
- Myth 4: EPAs are needed for WTO compatibility. There are alternative ways to

55 Several NGOs have criticised the EPAs for not prioritising the participation of non-state actors enough. Also, gender issues are, according to ChristianAid, not sufficiently considered.

56 See, for example, ChristianAid (2005, p.36)

have new trading arrangements between the ACP and EU that comply with WTO rules. FTAs are not the only solution, and other avenues, especially reform of GATT Article 24, should be explored seriously and jointly by both the ACP and EU.

- Myth 5: The financial costs of EPAs can be overcome. The EU is underestimating the negative impact of EPAs, and current EU positions (including that of providing no additional resources to the EDF) will not bring about an EPA outcome that allows ACP countries to cope with adjustment costs.
- Myth 6: EPAs will foster regional integration. RI processes within the ACP regions are very complex and the EU is pushing its own model of integration too hard and too fast. Different development levels among members of the same region, as well as the very similar productive structures of ACP economies, will create tensions and will not bring the regions to the degree of interdependence that the EU is claiming EPAs will achieve.

4.3 The development objectives of EPAs and alternatives to EPAs

As a result of these diverging views, some three years into the official negotiations, the debate on the nature of the development dimension of EPAs is livelier than ever. Following on the presentation of the different perspectives of the different parties in the debate (given above), this section of the Study shows that different conclusions in the discussion on alternative EPA arrangements are driven by different views on the 'development dimension' of EPAs.

4.3.1 The EC perspective

Some EC officials maintain that article 37.6 of the Cotonou Agreement on 'alternative possibilities' to EPAs caters for exceptional circumstances only. At the time of the negotiations on a successor partnership agreement to the Lomé Convention IVbis, which led to the Cotonou Partnership Agreement, there were extensive consultations on various options for the new trading arrangements. According to EC officials, there was broad consensus for the option of Economic Partnership Agreements that entailed both the progressive creation of a free-trade area between EU and ACP countries and additional development measures. The political agreement was to pursue EPAs and, given the nature of equal partnership

between the parties and the will not to impose any solution on ACP countries, Article 37.6 was drafted to leave a legal option open for a (non-LDC) country that was not in a position to sign the newly negotiated arrangement. The subsequent mandate that the EC received from EU member states was to negotiate EPAs and not to explore any alternatives to an EPA.⁵⁷ The European position is, in fact, that the best way to achieve the development objectives of the CPA is a free-trade agreement with accompanying measures to strengthen trade facilitation and provision of related services, improve the investment climate, and stimulate more efficiency and competition in ACP regional markets (the so-called ‘behind-the-border’ measures). From the EU perspective, different arrangements would not cover the development dimension. As a consequence, the Article 37.6 mechanism is not part of the formal negotiating process, and unless a non-LDC country expressed an interest in assessing ‘alternatives’ because it was not in a position to sign an EPA, the EC would not put any effort into ‘alternatives’ or any economic assessment of them. Mr Mandelson, EC Commissioner for Trade, confirmed that any alternative to EPAs is, in the EC view, only ‘second best’.⁵⁸ For non-LDCs, the only alternative, according to some EC officials, would be the Generalised System of Preferences (GSP). According to the EC, this is an inferior solution because it would be unilateral and related only to market access, without any developmental dimension and with no possibility of addressing issues like services, trade facilitation, SPS support or other behind-the-border measures to stimulate investment.

4.3.2 The NGO perspective

As detailed in Section 4.2.3, starting from completely different conceptual premises, a vast coalition of NGOs launched the ‘Stop EPA Campaign’ in 2004. They believe that EPAs, in their current form, present high risks and are not development-friendly.⁵⁹ Some NGOs have further advocated the use of explicit development benchmarks to ensure that the implementation of different components of EPAs is conditional to the achievement of related development objectives.⁶⁰ To reach the ultimate goal of the CPA—poverty eradication—the European Union should ensure that the development objectives of any new trading arrangements be realised

57 European Commission (2002).

58 See the minutes of Oral Evidence, pages 18-20 in HCIDC (2005).

59 See www.stopepa.org.

60 See CONCORD (2004).

through increased aid tailored to pro-poor trade and economic strategies in ACP countries. This approach is also reflected in the request by the ‘Stop EPA Campaign’ to the European Commission to be more flexible on the final outcome of the negotiations and to assist the ACP in carefully assessing EPAs against alternative options.⁶¹ As a consequence, CPA Article 37.6 on alternatives should be seen as part of the formal negotiation process, with alternatives effectively explored. In presenting the alternatives to EPAs as a second-best option, with no developmental component, the EC would be going against the spirit of what was agreed in Cotonou, because it would place the ACP in the position of having no real choice, thereby contradicting the principle of equal partnership between negotiating parties.⁶²

It is interesting that parliamentarians from some EU Member States⁶³ have expressed concerns about the development outcomes of EPAs similar to those expressed by NGOs and, therefore, still consider alternative options to be a concrete possibility.

4.3.3 The ACP perspective

ACP governments and negotiators, despite obvious differences within and between regional groups, stand somewhere in the middle. Informally, some do not believe that there is any feasible, concrete alternative to EPAs; others warn that they will never sign EPAs in their current form. But the official position of most countries is that a development-friendly EPA is the objective and so far there has been no real discussion about alternatives to EPAs. Some ACP negotiators believe ‘alternatives to EPA’ is a term used by NGOs, while regional negotiators and national governments prefer to see different parts of EPAs as subsequent steps to reach CPA objectives (starting with full opening of EU markets to ACP exports and ACP regional integration first and then gradual ACP opening and possible implementation of development-friendly behind-the-border measures). In the event of the development dimension of EPAs failing to materialise effectively, especially

61 The ‘Stop EPA Campaign’ (2004) calls, among other things, for the EU to ‘fulfil its commitment under the Cotonou Agreement and urgently begin to pursue alternatives with ACP countries, based on the principle of non-reciprocity instituted in GSPs and special and differential treatment in the WTO’.

62 Traidcraft (2004) considers the negotiations as deeply unfair, among other reasons because the EU is forcing the pace of the negotiations and has so far insisted on making decisions at the regional level, where, according to the authors, the EU’s leverage would, of course, be greater.

63 Notably, the UK House of Commons Select Committee (HCIDC, 2005, note 14).

through accompanying measures addressing supply-side constraints and institutional weaknesses, then an alternative to EPAs would become a concrete option. Therefore, the process provided for in CPA Article 37.6 is not seen as a compulsory mechanism that binds the EC to undertaking comparative studies on alternative arrangements, but it is still an option for ACP negotiators to choose and should be taken seriously. Several ACP governments are becoming increasingly concerned that there is no convergence between the ACP and the EU on the development component of EPAs and that the content of EPAs is still far from clear. As a consequence, and if the impasse is not solved in a timely way, the attractiveness of 'alternatives' might increase over the coming months.

In summary, ACP countries, EU member states, the EC and NGOs all claim to support the development objectives of the new trade arrangements. In practice, however, there is a serious divergence of approaches. It is urgent that all involved stakeholders clarify their position and identify the specific framework and content of an EPA (or any alternative to it) that they would consider conducive to development. In doing so, they could focus on the following three dimensions: trade rules, accompanying measures and effective procedures for support delivery.



Chapter 5

Why consider alternative (to) EPAs?



5 Why consider alternative (to) EPAs?

The increasingly intense public debate over EPAs and their potential to effectively address development concerns (discussed in Chapter 4), coupled with the CPA provision to consider (if necessary) all alternative possibilities for a new ACP-EU trade regime (discussed in Chapter 2), has led many observers, in particular from civil society, to call for greater considerations to be given to alternative trading arrangements between the ACP and the EU. Section 5.1 outlines the two key motives to consider alternatives to EPAs, while Section 5.2 makes explicit the distinction between alternative possibilities for EPAs and alternative options to EPAs.

5.1 *Alternatives to EPAs*

Since all ACP countries have agreed to enter into negotiations with the EU on an EPA, why should anyone bother considering an alternative? The reasons are twofold:

- (1) ACP countries might wish to consider an alternative to EPAs as a preferred alternative to the EPA negotiations, either because they are not convinced about the merits of EPAs (which they see only as a second-best option) or because they seek a possible fallback position in case an EPA is not concluded.
- (2) An alternative could act as a benchmark scenario against which the outcome of EPA negotiations could be evaluated.

The former is the case most commonly referred to.

5.1.1 Alternatives to EPAs as first best option or fallback position

As foreseen by the Cotonou Agreement (notably, Article 37.6), ACP countries that would not be in a position to conclude an EPA should be offered an alternative trading arrangement. Since all ACP countries have effectively engaged in EPA negotiations (in September 2002 at the all-ACP level and since 2003/2004 in the context of their elected regional configuration), an alternative trading arrangement would naturally constitute a fallback scenario for ACP countries that, for one reason or another, would choose to walk away from the negotiation table, or would

refuse to agree with (or ratify) the EPA concluded at the regional level. However, some ACP countries may have decided to start negotiating an EPA only to follow their regional partners (e.g., to show solidarity) and to comply with the Cotonou Agreement that foresees the start of EPA negotiations in 2002 (CPA Article 37.1) with no possible request for alternatives before 2004 (CPA Article 37.6). A country could then negotiate an EPA as a second-best option, while its preferred (i.e., first-best) option would rather be a (hypothetical) alternative.

One question is whether, or at what moment, such an alternative trading arrangement should be identified. Article 37.6 states the following:

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

From a legal perspective, the first part of Article 36.7 suggests that the situation of non-LDCs should have been assessed in 2004 for those that would have decided that they could not enter into an EPA. Since all ACP countries (including non-LDCs) are still currently negotiating an EPA, this clearly suggests that none have as yet concluded that they would not be able to sign an EPA, so alternative possibilities do not need to be considered. This situation seems to have led the ACP and the EU to argue that at this stage it is not yet necessary to divert attention and scarce resources away from the current negotiations in order to contemplate alternative options to EPAs.

However, a different reading of this Article suggests that, in 2004, the Community shall undertake two independent tasks:

- (1) It 'will assess the situation of the non-LDC', but only those that 'decide that they are not in a position to enter into economic partnership agreement', which is not the case of any ACP country so far.
- (2) In addition, the Community will 'examine all alternative possibilities'.

If indeed the second task, which consists of identifying all possible alternatives to EPAs, is independent from (i.e., not directly related to) the first (assessment) task,

then it should not be related to the negotiation process and should have been conducted in 2004. Following an agreement between the ACP Group and the EU, this date has been postponed to 2006.⁶⁴

Aside from the legalistic argument, European officials and several ACP trade negotiators have expressed doubts about the relevance of a formal examination, particularly at this stage. Indeed, they see the negotiation and conclusion of EPAs as a priority for which all efforts and attention should be dedicated, as no better alternative exists. For them, EPAs are the first best option.⁶⁵

On the contrary, others, including some NGOs, have forcefully argued for alternatives to be considered as soon as possible, to provide a choice of possible trade regimes to ACP countries. This is the position of ActionAid, for instance, which insists that 'ACP countries must have a real choice between an EPA and a pro-development alternative up-front. They should not have to reject an EPA first in order to find out what the alternative might be' (ActionAid, 2005, p.8).

5.1.2 Alternatives to EPAs as a benchmark

There is another reason to consider alternatives to EPAs: to identify a benchmark scenario against which an EPA can be compared. In most cases, the outcome of (trade) negotiations can be measured against the status quo. This is the case, for instance, with WTO negotiations, where a failure to conclude the Doha Round would leave countries to rely on the current rules of the world trading system. Similarly, as long as the Mercosur countries (Argentina, Brazil, Paraguay and Uruguay) and the EU fail to reach a free-trade agreement, the applicable trade regime among the parties is the current one (the status quo). The situation, however, is drastically different for the ACP countries. The current regime of prefer-

64 It is interesting to note that this change of timing has not been included in the formal revisions to the Cotonou Partnership Agreement, agreed among the parties in 2005.

65 Asked about whether there are no alternatives to negotiating EPAs offered, the European Commission officially replied: 'The negotiations of EPAs and the examination of alternatives for non-LDC countries were decided in the Cotonou Agreement. At the request of the ACP side, the EU agreed to let the 2004 deadline for discussing alternatives pass and to be prepared for discussing such requests whenever appropriate. But both sides agreed that the joint ACP-EU focus was on designing EPAs which will be the most effective tools for the development of ACP countries. Why would one want to discuss *second best alternatives at this stage*? It is noteworthy, that no ACP country has so far requested the EU to examine alternatives to EPAs. On the contrary, all ACP countries are currently actively engaged in the negotiations' (European Commission, 2005a, point 4.2) [*emphasis added*].

ences, as embodied under successive Lomé Conventions and the initial phase of the Cotonou Partnership Agreement, is due to end by 31 December 2007, to be replaced on 1 January 2008 by a new trade regime. This commitment, undertaken in the CPA by all ACP and EU parties, became binding in the WTO with the granting, in November 2001, of the temporary waiver, due to expire by the end of 2007, for the current Lomé/Cotonou preferences.⁶⁶ Hence, irrespective of whether EPAs will be concluded before 2008, the current ACP-EU trade regime must be changed (unless a new waiver is granted by WTO members, which appears to be unlikely).

To assess what would constitute a 'good'/'desirable' EPA, it is therefore not sufficient to compare its content with the current Lomé/Cotonou trade regime, to ensure that ACP countries are better off. An EPA must be assessed against an alternative (new) trade regime that would be available should an EPA not come into force.⁶⁷ As such, alternatives to EPAs could provide a benchmark that could prove most helpful to negotiators eager to conclude a positive EPA. This would give them the only serious yardstick to measure the net benefits of an EPA and the costs of failing to reach an agreement. In this respect, all stakeholders should be interested in identifying an alternative to EPAs, even those most dedicated to the EPA approach.

5.2 Alternatives to EPAs or alternative EPAs

The debate over alternatives has been somewhat clouded by the competing understanding of the Cotonou Agreement and what constitutes an EPA. For some (mainly NGOs, but also some ACP officials, at the ACP Secretariat for instance), an EPA is simply a generic name for the new trading arrangement to be negotiated between the ACP and the EU, as foreseen under CPA Art. 37.1. It should pursue the objectives and principles defined in CPA Art. 34 and 35, related to the development needs and objectives of the ACP countries and regions. As such, it does not require reciprocity. The EPAs envisaged in the current negotiations are just one form out of many that such an agreement could take. Alternative EPAs, in which reciprocity

66 See 'Decision on Waiver for EU-ACP Partnership Agreement' (WT/MIN(01)/15) and 'Decision on EU Transitional Regime for Banana Imports' (WT/MIN(01)/16), 14 November 2001, www.wto.org/english/thewto_e/minist_e/mino1_e/mino1_e.htm#declarations

67 It is important to stress that, from this perspective, the merit of considering alternatives to EPAs is not related to the likelihood of any failure to conclude an EPA, nor its desirability, but simply to the necessity of providing a benchmark against which an EPA could be evaluated.

would not be a cornerstone, could, and thus should, be considered and it is essentially the EU that sees EPAs as reciprocal free-trade areas. This is the position defended by many of the members of the 'Stop EPA Campaign'⁶⁸ ActionAid (2005), and EcoNews Africa and Traidcraft (2005), for instance, explicitly consider non-reciprocal EPAs.

For the others, an EPA, while designed to foster development (as stipulated in CPA Art. 34 and 35), must take the form of a free-trade agreement. Although not explicitly stipulated in the Cotonou Agreement, it is for them a logical consequence of CPA Art.36.1, which states that

the Parties agree to conclude new World Trade Organisation (WTO) compatible trading arrangements, *removing progressively barriers to trade between them* and enhancing cooperation in all areas relevant to trade. [emphasis added]

To comply with WTO rules, GATT Article XXIV requires, among other things, the reciprocal liberalisation of substantially all trade among the parties within a reasonable length of time. An EPA must thus be an FTA in the sense of GATT Article XXIV. As for the Enabling Clause of the GATT, it is true that it allows for the possibility of non-reciprocal discriminatory trading arrangements, but not between a developed partner and an arbitrary set of developing countries, such as the ACP countries (see Section 3.2.2). Thus, talking about a non-reciprocal EPA is nonsense.

That is, under the current WTO rules. Since WTO rules, including those related to regional trading agreements, are currently being negotiated under the Doha Round, nobody can be certain about what WTO rules will prevail once the new ACP-EU trading arrangements enter fully into force. WTO compatibility is thus a moving target. The proponents of very flexible and non-reciprocal EPAs find there the legitimacy for their call for a radical change in reciprocal liberalisation under an EPA.

Two considerations might, however, limit the foundation of this radically new

68 The official statement of the Stop EPA Campaign, whose title is indeed 'Stop EU-ACP Free Trade Agreements', explicitly states that 'EPAs as they are currently being set up and negotiated are essentially Free Trade Agreements. . . . we reject these "Economic Partnership Agreements" as currently envisaged', suggesting that other forms of EPAs could be considered. Such calls for the EU to change its current stance on EPAs and abandon the drive for reciprocal trade liberalisation can also be found in numerous NGO documents (e.g., Actionaid et al., 2004; CONCORD, 2004; Traidcraft, 2004).

approach to EPAs. First, WTO members do not seem willing to introduce fundamentally new rules on preferential trade regimes (see Section 3.2.3). A second factor, removed from the likelihood of a radical reform of WTO rules, supports the reciprocity concept embodied in EPAs: the Cotonou Agreement itself, which stipulates that the EU and the ACP will be ‘removing progressively barriers to trade between them’ (CPA Art.36.1). Taken together, CPA Articles 36.1 and 37.1 imply that EPAs will entail a reciprocal liberalisation of trade between the EU and the ACP.

In addition, if EPAs could take various forms, ranging from full reciprocity to non-reciprocity between the parties, what would be the rationale for explicitly providing for the consideration of alternative possibilities (CPA Art.37.6)?

In order to clarify the debate, it therefore seems more fruitful to make the distinction between two types of trading arrangements:

- (a) EPAs, which entail (some elements of) reciprocity in the liberalisation of substantially all trade among the parties;
- (b) alternative arrangements, which could cover a broader range of possibilities, removed from the reciprocity condition.

This is the approach adopted in this Study. Taking the approach to EPAs adopted by the EC, an attempt is made to distinguish between:

- (a) *alternative EPAs*, which covers scenarios where some flexibility is introduced regarding how, to what extent and under what conditions reciprocal trade liberalisation takes place between the EU and the ACP, while complying with GATT Article XXIV (in its current or revised form);
- (b) *alternatives to EPAs*, which covers cases explicitly deviating from the reciprocity principle, thus falling outside the scope of GATT Article XXIV.

In practice, however, it is not always obvious how to classify some of the scenarios envisaged. It would be preferable to consider the various possible scenarios along a continuum, ranging from an EPA with full reciprocity at one extreme, moving towards alternative EPAs and, following a grey area, reaching alternatives to EPAs (non-reciprocal trading arrangements).

Figure 1: A range of scenarios of alternative(s) (to) EPAs



Chapter 6

A range of alternative scenarios



6 A range of alternative scenarios

This chapter outlines major alternative scenarios that have been or could be envisaged. The main features of each scenario are first presented, with a focus on their market access dimension.⁶⁹ The issue of compatibility with WTO rules and the implications for regional integration are then briefly assessed. Finally, considerations on the development dimension, available policy space and likely political feasibility are sketched for each scenario, without venturing, however, into broader expected economic and development effects.

For the sake of clarity and simplicity, the scenarios envisaged here are classified along the two main categories described above: alternative EPAs (which could comply with GATT Article XXIV or a revised version thereof) are outlined in Section 6.1, and alternatives to EPAs (not covered by GATT Article XXIV) are presented in Section 6.2.

Note that this Study does not explicitly consider as alternative (to) EPA new geographical configurations that would differ from the six self-determined ACP regional groupings.⁷⁰

6.1 *Alternative EPAs scenarios*

The basic principle of the alternative EPA scenarios is to stretch flexibility on the requirements for WTO compatibility (notably with regard to the level of reciprocity) as much as possible and/or to adjust the current EPA framework to better accommodate some development concerns.

6.1.1 Benchmark scenario: the basic EU EPA

In principle, a free-trade agreement should entail free trade among the parties. In practice, however, this is hardly the case. While the case of complete free trade has

69 Other trade and trade-related aspects, as well as accompanying measures, are briefly discussed in Section 6.1, as part of a flexible benchmark scenario.

70 Examples could be an EU-Pacific EPA comprising only members of the Melanesian Spearhead Group Trade Agreement (Fiji, Papua New Guinea, Solomon Islands and Vanuatu) or the dissolution of the SADC EPA configuration to include the BLNS countries in an enlarged TDCA with South Africa. As suggested by Roux (2005), in this event, Tanzania, Angola and Mozambique (which are LDCs) could negotiate with the ESA configuration or opt for the EBA treatment.

often been considered in impact assessment (see Section 4.1) for the sake of simplicity, FTAs usually entail only a partial (i.e., less than 100%) liberalisation of trade among the parties. In other words, exclusion from liberalisation (measured in terms of value of trade or tariff lines) is the rule in FTAs rather than the exception. This holds true for the EPAs as well.

In considering a benchmark for alternative(s) (to) EPAs, it is therefore preferable to refer to the current EU position on EPAs.

Key features

The basic approach to EPAs proposed by the EU is a comprehensive free-trade agreement (FTA+) that includes trade in goods (including agricultural products) and services, and covers trade and trade-related market access issues, as well as ‘beyond the border’ regulatory measures.

For the European Commission, an EPA, like any FTA, should entail liberalisation of 90% of the total value of trade among the parties. This reflects the EU understanding of the ‘substantially all trade’ provision of GATT Article XXIV. As discussed in Section 3.1.1, the EU supports an asymmetrical approach in favour of the developing country, taking into account the balance of trade among the partners.

As indicated by Figure 2, the EU experiences only a slightly negative trade balance with the group of ACP countries, suggesting that if the EU liberalises 98% to 100% of its trade, the ACP overall will have to liberalise, on average, less than 80% of their trade with the EU. The situation, however, differs among ACP regions, with West Africa and the Caribbean experiencing a slight deficit in their trade balance with the EU, whereas other regions have a trade surplus (see Figure 3). Based on such considerations, the European Commission has estimated that, to meet its criteria of WTO compatibility, the ACP regions would have to liberalise at least 67% to 83% of their trade with the EU, as shown in Table 3. The transition period for implementation could extend to 10, 12 or even 15 years.

In terms of trade-related matters, the EC has tabled an extensive wish list, including issues such as technical and safety standards, investment, trade facilitation, competition policy, government procurement, environment and labour standards

and policy, intellectual property and data protection. The specific inclusion of each of these items and the scope of the agreement depends, however, on the outcome of the negotiations for each regional EPA. Therefore, including specific trade-related matters in the new trading arrangement or not is not considered a criterion for defining a scenario as an alternative EPA in the context of this Study.

A more modest approach would consist of considering all the recent FTAs signed by the EU with developing countries, and, for each topic to be included in an EPA, selecting the least constraining or ambitious provisions of them all on the basis that ACP countries are less developed and therefore require more flexibility than any developing country that has ever concluded an FTA with the EU (e.g., Mediterranean countries, South Africa, Mexico, Chile). This has been referred to as an 'EPA Frankenstein'.⁷¹

It is against the EU proposal for EPAs and this 'modest' (i.e. Frankenstein) EPA that other scenarios for alternative EPAs and alternatives to EPAs must be assessed.

WTO compatibility

The European Commission has repeatedly insisted on the necessity of reaching an agreement that would fully comply with WTO rules. Ultimately, any alternative EPA scenario that is WTO compatible would be acceptable to the EU. The current ambitious EU framework proposal for an EPA appears fully compatible with the common understanding and past practice of the EU on the WTO requirements for an FTA.

Regional integration

The intent of the EU is to build upon and strengthen the regional integration process of the six ACP regions that negotiate an EPA. EPAs should contribute to creating larger and better-integrated regional ACP markets and increasing the commitment to and credibility of the integration agenda, a key element to stimulate investment. However, the EU approach also poses serious challenges to the process of regional integration of the ACP. EPAs may derail regional integration by imposing too fast a pace for the political, economic and social realities of some regions and by overstretching their capacities. It might also create tensions for regions

71 As proposed by Chris Stevens.

with overlapping memberships (such as in the Eastern and Southern Africa sub-region) or with members whose interests in an EPA differ.

Scope for development and policy space

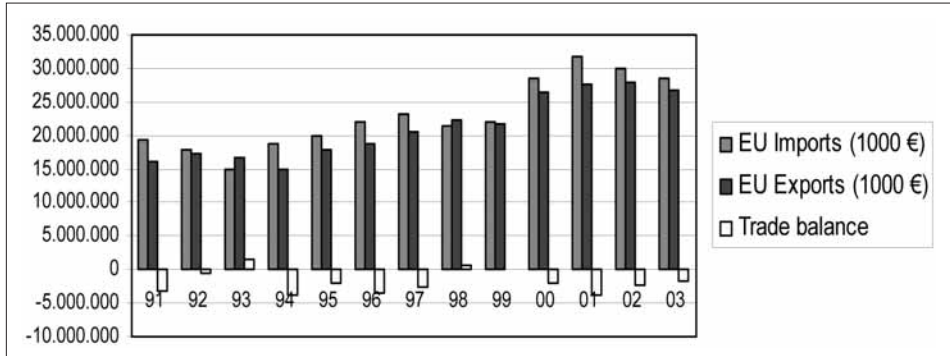
The EPA approach proposed by the EU is based on market-driven premises for development, with the creation of the appropriate trade(-related) liberal environment to stimulate investment and growth.⁷² However, in its current form, it abstracts from broader institutional, structural and economic considerations that the EC would prefer to address under the development pillar of the Cotonou Agreement, with no formal binding linkages to the EPA agenda. The extensive scope of the EU-proposed EPA would limit the policy space of ACP countries to pursue more interventionist policies to stimulate the competitiveness of their industries and the endogenous sustainable development of their economies. The ultimate impact on the development of the ACP would thus depend on the specific content of such an EPA, as well as the opportunity and capacity of the ACP to adopt the appropriate regulatory framework in the context of an EPA in order to foster growth and development through market forces while ensuring the transformation and smooth adjustment of their economies to contribute to poverty alleviation and sustainable development.

Political feasibility

The EU is a very persuasive actor with powerful arguments. It has managed to press EPA negotiations upon initially reluctant ACP countries, and the current EPA framework strongly follows the EU agenda for EPAs. Negotiations are progressing to the satisfaction of the EU with the official active participation of all ACP regions, while the specific content of each EPA still remains to be negotiated. And while this could lead to a significant stiffening of respective positions, official expectations are that EPAs will be concluded. It remains to be seen, however, to which extent the EU approach to EPAs will be altered during these negotiations (if at all), and whether all ACP regions or countries will ultimately sign an EPA. This uncertainty makes this discussion on alternative(s) (to) EPAs only more relevant.

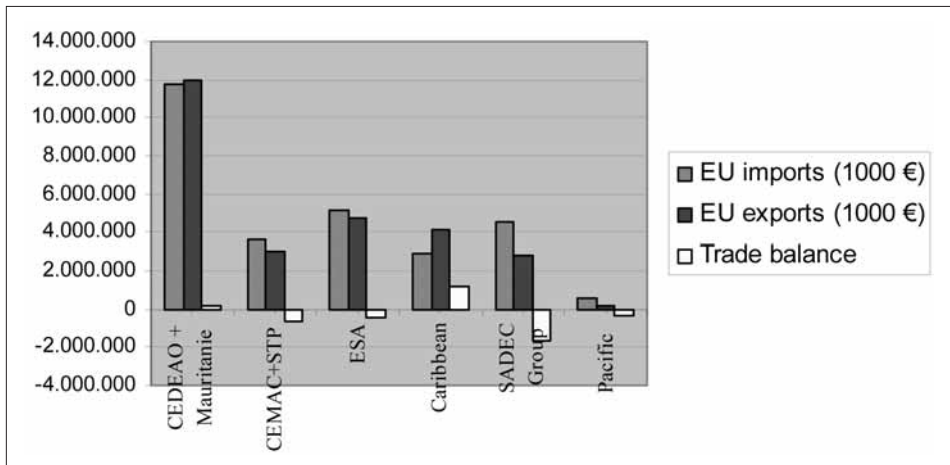
72 See European Commission (2005c) and the discussion in Section 4.2.1.

Figure 2: Trade balance of the EU with the ACP group of countries: 1991-2003



Source: Maerten (2005).

Figure 3: Trade balance of the EU with ACP regions (2003)



Source: Maerten (2005).

Table 3: Share of the Value of Trade That ACP Regions Must Liberalise to Meet the Minimum EU Criteria for WTO Compatibility (Percent)

EPA regions	Value of trade
Caribbean	83%
West Africa	81%
East and Southern Africa	80%
Central Africa	79%
Southern Africa	76%
Pacific	67%

Source: Maerten (2005).

6.1.2 'EPA light' concept

Key features

A minimalist approach to EPAs would consist of focusing, in a first stage, on the opening of ACP markets to the minimum level necessary for securing WTO compliance. In a second stage, at a speed and extent to be defined by the ACP countries themselves, negotiations with the EU could centre on a long-term approach to address supply-side capacity constraints in the ACP and to build effective and functioning regional markets. This could then lead to further liberalisation from the ACP side, in an effort to further stimulate ACP regional competitiveness.

This pragmatic approach, proposed by the Ambassador of Mauritius to the EU and supported by ERO,⁷³ would ensure that all ACP countries could keep and improve on their market access to the EU beyond 2007, while seeking to limit the potentially negative effects of any significant liberalisation by the ACP. According to EC estimates, ACP regions would have to liberalise a minimum of 76% to 83% of their trade (67% for the Pacific) (see Table 3). But interpretations of the current WTO rules differ. The advocates of this minimalist approach claim that, to comply with GATT Article XXIV, an FTA could require, for instance, an average of 85% product coverage with a 17-year transition period. Provided that the EU grants duty-free access to all ACP countries (along the lines of EBA for LDCs), as suggested in the 'EPA light' scenario, the ACP would arguably have to eliminate tariffs on only 50% to 60% of their imports over a 20-year period. According to ERO (2005a, p.2):

Since this would allow the exclusion of most items currently protected by high tariffs and require only tariff elimination of duties on low tariff items, the negative impact this would have on building regional capacities to supply regional markets would be very limited.

WTO compatibility

The 'EPA light' proposal obviously attempts to stretch the understanding of the existing flexibility of WTO rules to the limit. While it does not seem unrealistic that 85% product coverage would be acceptable under GATT Article XXIV, the asymmetry suggested by the numbers 50% to 60% would tend to render any trade liberal-

73 See Aprovev et al. (2005a; 2005b) and ERO (2005a; 2005b), for instance.

isation by the concerned ACP countries marginal. It is not clear how these low thresholds are calculated, or how they and the longer transition period would be deemed WTO compatible. As such marginal liberalisation would de facto defeat the intent of an FTA,⁷⁴ it could be more prone to challenge by other WTO members. However, since no FTA has ever been challenged to the WTO so far, and given that the amount of trade between the concerned parties remains very small, this loose interpretation of WTO rules could benefit indirectly from the passivity of other WTO members.

Regional integration

By limiting the scope of the agenda for negotiations up to the end of 2007, the defenders of this option argue that it would allow attention to shift away from a complex (heavy?) EPA agenda, to focus on a joint ACP-EU economic cooperation partnership to support and build effective regional markets. It is interesting that UNECA (2005a) also concludes that, for EPAs to provide significant benefits, the focus should first be on the strengthening of effective regional integration before engaging in significant market opening with the EU. Negotiations on trade-related issues (e.g., investment, competition, etc.) and further market liberalisation could take place after 2008.

Scope for development and policy space

This option, by leaving the trade regime of the ACP countries mainly unaffected, does preserve the so-called policy space and allow them to pursue active policies to strengthen their supply capacity, sheltered from any significant EU competition. By the same token, in opting for minimum liberalisation, in particular in sectors that would be the most affected (i.e., those protected by high trade barriers), the 'EPA light' option would negate most of the potential economic benefits for ACP economies that could potentially accrue from trade liberalisation.

The 'EPA light' option does not challenge the general assumption that a comprehensive agreement beyond standard issues of market access in the sense of GATT Article XXIV could have a positive effect on the development of the ACP. Its main contention however relates to the speed and sequencing of the process. By scaling

74 See Section 7.2.1 for examples of possible scenarios for product coverage leading to very limited reduction of tariffs.

down the trade-related component of EPAs, it aims to allow ACP countries to strengthen their regional markets first. However, if EPAs are to provide the proper incentive to foster a comprehensive strategy for pro-development trade and economic integration, as believed by the EC, would the momentum not be lost once a new minimalist WTO-compatible FTA was signed, by the end of 2007? Would an 'EPA light' agreement ever be supplemented after 2008 by additional trade-related measures that the ACP may wish to adopt to promote their development?

Political feasibility

An 'EPA light, as long as it complies with WTO rules, should be acceptable to all parties. However, for some ACP countries, interested in broadening the scope and coverage of such an EPA after 2008, their political capital could be strongly diminished. Indeed, standard trade negotiations are about bargaining, often in a mercantilist way: one party makes a concession (viewed generally in terms of own market opening or agreement to negotiate on an issue of interest to the other party) against a concession by the other party. These trade-offs are common in multilateral as well as bilateral negotiations. In the case of EPA negotiations, the EU tends to drive the agenda by asking the ACP to open their markets and undertake commitments on other trade and trade-related issues. The major 'concession' (in mercantilist terms) that the ACP can offer is the reciprocal opening of their markets to the EU. Once this is granted under an 'EPA light' agreement, what would be left of the ACP's already marginal bargaining power? How would they be able to extract concessions from the EU on trade-related issues that matter to them? And how would they obtain binding commitments from the EU for development and trade-related adjustment support to accompany the elimination of trade barriers against EU imports, as they currently request? By disentangling issues, would the ACP not lose any negotiating leverage they possess?

In other words, by de-linking the negotiations on market opening from broader trade and trade-related issues (including the strengthening of their regional markets, the development of their capacities and the provision of accompanying measures), an 'EPA light' might fail to deliver on the development promises of EPAs. This is of course not a problem if, as argued by many sceptics, the current EPA framework does not have the potential to deliver on its development promises anyway.

6.1.3 EPAs with explicit SDT

Key features

One scenario consists of introducing as much flexibility as possible in an EPA to pursue development concerns in the form of explicitly recognised special and differential treatment (SDT). This could be done in the context of existing WTO rules or by amending GATT Article XXIV. The scope and nature of trade-related matters included in such EPAs should also reflect the various development levels and concerns of the ACP countries.

WTO compatibility

In the context of current rules, an option would be to convince the EU to change its self-defined criteria for WTO compatibility. That is, the threshold for ‘substantially all trade’ could be lowered to an average of 85% or 80% of the value of trade among the parties, or a different formula could be adopted, based on the coverage of tariff lines, for instance (the so-called Australian formula). Similarly, longer transition periods could be envisaged, extending beyond the 10- to 12-year limit, as is the case, for instance, for some products in other regional agreements (e.g., 15 years in some NAFTA provisions, and up to 18 years in US-Australia FTAs). The argument would be that since the WTO Committee on Regional Trade Agreements de facto does not monitor FTAs notified to the WTO and that no FTA has so far been challenged at the WTO,⁷⁵ the ACP and EU could use the implicit flexibility of GATT Article XXIV to accommodate a certain degree of SDT and flexibility in EPAs. After all, several existing FTAs may not comply with the EU interpretation of GATT Article XXIV, so why should the ACP worry more about WTO compatibility than other WTO members? If the EU and ACP were to accept such a pragmatic approach, flexibility could easily be introduced in an EPA. The major drawback, however, is the uncertainty entailed with such an approach: the greater the flexibility introduced in an EPA, the greater the risk that an aggravated WTO member would challenge the EPA under the WTO dispute settlement mechanism.

An alternative, favoured by the ACP Group, is to seek an explicit revision of GATT Article XXIV in the negotiations on WTO rules in the Doha Round, as outlined in Section 3.2.1.⁷⁶ In essence, the ACP proposal aims to obtain legal certainty for a flex-

⁷⁵ See, for instance, Crawford and Fiorentino (2005) and Mavroidis (2005).

ible interpretation of GATT Article XXIV, which would explicitly recognise developmental aspects and SDT, notably by allowing explicit lower thresholds and/or a favourable methodology for DCs in determining criteria for ‘substantially all trade’ and extending the possible transition period for the implementation of an FTA to at least 18 years for DCs.

Regional integration

In principle, an approach where the specific development concerns of each member could be better accommodated should facilitate regional consensus on negotiation positions and outcomes. The specific recognition of SDT in an EPA could thus smooth the regional integration process of each of the regions. However, for this to occur, it is necessary that regional positions be well coordinated and that provisions for SDT be agreed upon on the basis of transparent and objective criteria. In the absence of such a coherent approach, tensions could arise within a region, in particular if country-specific SDT are granted on an arbitrary basis or to the countries with stronger bargaining power (or better negotiation skills), at the expense of truly weak and vulnerable economies.

Scope for development and policy space

The ACP proposition to revise WTO rules would lead to an EPA with SDT that is consistent with both the overall EU approach to EPAs and the development opportunities they offer according to the EC, as well as with ACP concerns to cater for their specific development needs. Similarly, taking full advantage of the imprecision of GATT Article XXIV could allow development objectives to be pursued in a more flexible manner.

Political feasibility

The revision of substantive (as opposed to procedural) provisions of GATT Article XXIV is currently not supported by a majority of WTO members. However, in the context of the dynamics of the Doha Round, it is not unrealistic to expect a change of mood in the coming months with increasing support for some of the concerns of the ACP. The EC, initially opposed to introducing explicit SDT into GATT Article XXIV, has recently announced its readiness to consider the explicit introduction of

76 Some ACP negotiators make a direct link between the ACP attempt to amend Article XXIV and the inclusion in Article 37.7 of the wording ‘conformity with WTO rules then prevailing’ that they sponsored while negotiating the Cotonou Agreement.

development considerations in the WTO rule on RTAs. To what extent this could affect the final outcomes of EPA negotiations remains to be seen.

6.1.4 Binding provisions on development-related liberalisation

Key features

Another scenario, suggested by some NGOs, such as Oxfam International,⁷⁷ is to introduce binding development ‘thresholds’ into the liberalisation schedule of DCs to implement an FTA. Their liberalisation schedules would no longer be solely dependent on pre-determined timeframes, but on reaching some agreed development thresholds that would trigger further liberalisation.

A variant of such an approach would be to link tariff-reduction schedules and the provision of EPA-related development cooperation. ACP governments and NGOs claim that EPAs should be tools for development, but because they require significant adjustment costs, development assistance and the implementation of EPAs are intrinsically linked. For certain regions and countries, this could mean that specific components of such trade-related assistance might need to come before the implementation of trade liberalisation (for example, strengthening of tax collection/administration systems where revenue shortfalls due to reductions in tariffs are expected to be particularly serious). A greater coherence and complementarity between the trade-related content of EPAs, the necessary accompanying and adjustment measures, and the timely and effective delivery of support could be guaranteed by binding commitments for the EU on development cooperation. The agreement would allow an ACP country to implement the various stages of trade liberalisation only upon actual receipt of the related assistance.

The idea of binding liberalisation in EPAs to the availability of resources for development cooperation and/or the achievement of development thresholds was recently suggested in the European Parliament Working Document on the development impact of EPAs. In her report, the Chairwoman of the Committee on Development states (Morgantini, 2005, p.4):

77 This type of proposal has so far been framed mostly around WTO negotiations; see, for instance, Oxfam (2002, p.20).

It is clear that all the costs [related to an EPA] will require additional funding above and beyond what is currently being envisaged in the financial perspectives of the 10th EDF. In this respect it would be useful to build triggers into the EPAs negotiations, to ensure that a phase can start only when resources are available or when a certain result has been attained.

WTO compatibility

A scenario where trade liberalisation is conditional (to either provision of development support or achievement of development thresholds) is of course not compatible with current WTO rules on RTAs.⁷⁸ It also appears unlikely that a revision of GATT Article XXIV would include such binding provisions on development-related liberalisation, since it would make the free-trade characteristics of an FTA conditional on development criteria and at least partly dependent on the FTA partners. Such provisions would be prone to abuse, particularly by partners that would aim to disguise preferential agreement and partial liberalisation under the heading of an FTA.

Regional integration

The consequences of such a scenario on regional integration would depend on the way binding commitments are set. If they are agreed upon at the regional level, with coherent application to all member countries, regional integration should not be negatively affected, unless the binding provisions effectively limit the scope for regional liberalisation. But to the extent that delays in regional integration would be related to legitimate development concerns (i.e., the achievement of development thresholds), a slower pace in the regional integration process could be perceived as ultimately beneficial for the development of the region.⁷⁹ However, should binding development thresholds be set in an uncoordinated manner, they

78 It is worth noting, however, that similar concepts of 'conditional liberalisation' can be found in existing WTO safeguard mechanisms (conversely, where a country can temporarily suspend liberalisation as long as import levels pose a threat to balance-of-payment stability) or in proposals on 'special products' in the context of multilateral negotiations on agriculture (whereby developing countries could exclude products of strategic importance from further tariff reductions. 'Strategic importance' is linked to statistical indicators, such as number of poor farmers depending on that crop (see the 'special products' proposal by the G33 Group of countries available at www.tradeobservatory.org/library.cfm?RefID=77130). Should strategic importance decrease, then the tariff for that crop could be reduced.

79 Regional integration should not be perceived as an end in itself, but as a mean to promote development. Adjusting the pace of the regional integration process to the constraints of the member countries and their development objectives is a key condition for successful regional integration.

might jeopardise the coherence of the regional integration process, de facto setting aside some member countries (as argued in the previous scenario, 6.1.3).

Scope for development and policy space

In principle, binding development thresholds and support commitments, if appropriately determined, would constitute the best guarantee for an EPA to effectively promote development. The challenge would lie, however, in the identification of criteria for the thresholds and/or accompanying support most conducive to the development of ACP economies.

Political feasibility

While the adoption of guiding development benchmarks, as discussed in Section 7.3, could be supported by most if not all stakeholders, binding the opening of ACP markets to the achievement of specific development thresholds under EPAs should encounter strong resistance from the EU in particular, notably on the ground that it would not be (and under the Doha Round is unlikely to ever become) compatible with WTO rules. Such an approach could, however, generate broader consensus on some trade-related issues (such as trade facilitation, competition policy, some investment measures, etc.) not directly linked to the dismantling of tariff barriers and WTO requirements under GATT Article XXIV.

6.1.5 EPAs for ACP non-LDCs only

Key features

EPAs may not have the same attractiveness to all ACP countries. Under this scenario, only non-LDC ACP countries would enter into an EPA. The other ACP countries that are LDCs would simply keep the benefits they are already enjoying under the EBA initiative of the EU GSP, which gives them free access to the EU market.

WTO compatibility

This division between LDC and non-LDC ACP countries would allow all ACP countries to maintain or improve their market access to the EU under trade regimes that comply with WTO rules. EPAs will have to satisfy the conditions of GATT Article XXIV on RTAs, whereas the EBA regime is an element of the EU GSP that satisfies the requirement of the Enabling Clause.⁸⁰

Regional integration

A major drawback to this option is that it would de facto seriously undermine the ACP regional integration process, splitting each region between the (non-LDC) countries that enter an FTA/EPA with the EU, and those (the LDCs) that maintain their trade barriers against the EU. It would be difficult under these conditions to imagine any ACP region effectively implementing their regional integration programme.⁸¹ For instance, a customs union would not be compatible with such an option, as all regional members need to abide by the same common external tariff. Setting different duties for EU imports, depending on their destination, would de facto require specific rules of origin and border controls within the region, hence negating the principle of the customs union.⁸²

Scope for development and policy space

This scenario focuses mainly on standard market access for goods, the principle that no ACP country should be worse off under the new ACP-EU trading arrangements and the issue of WTO compatibility. Indeed, since ACP countries that are LDCs already benefit from the EBA initiative under the EU GSP, there is no need for them to provide reciprocity to maintain their preferential access to the EU market, contrary to ACP non-LDCs that need a new trade regime to replace the Lomé/Cotonou system of preferences.

By opting out of EPAs in favour of the EBA option, ACP LDCs would avoid any of the adjustment costs and other negative effects associated with reciprocal trade liberalisation, which may be more pronounced in poorer countries. Having generally

80 In particular, the EBA provision is covered by Article 2(d) of the Enabling Clause, which allows for “special treatment on the least developed among the developing countries in the context of any general or specific measures in favour of developing countries.”

81 In its report on the EU’s trade agreements with ACP countries, the UK House of Commons International Development Committee noted the following:

DFID’s view is that if the LDCs choose not to negotiate an EPA—that really makes things very, very complicated in terms of integrating into a region. We do not think that things should be made complicated for the LDCs. The EBA should be a real option for LDCs. And they should not have to offer reciprocal market access to the EU until they have graduated from LDC status. The EBA should not conflict with regional integration initiatives in the ACP, especially given the emphasis that DG Trade is placing on the importance of regional integration. (HCIDC, 2005, p.16, para.38)

See also UK Government (2005, p.5, para.11).

82 In practice, this is, however, not impossible, although it is highly undesirable, as illustrated by the case of the Southern African Customs Union (SACU), with South Africa having entered a free-trade agreement with the EU (the TDCA), whereas Botswana, Lesotho, Namibia and Swaziland, although part of SACU, enjoy preferential market access to the EU under the Cotonou Agreement and are negotiating an EPA within the context of SADC.

weaker production, institutional and infrastructure development capacities, the poorest countries are less able to compete and adjust their economies in a market open to EU imports, and thus are more likely to be negatively affected by the introduction of a reciprocal free-trade agreement.

However, by choosing EBA, ACP LDCs would also renounce any of the potential benefits that could be entailed in an EPA, as advocated by the EU.⁸³ Besides, EBA is a unilateral initiative by the EU, which, as part of its GSP can be revoked at the EU's will. There is therefore no legal guarantee that the ACP LDCs will maintain duty- and quota-free preferential market access to the EU in the long run, thus creating some uncertainty.

Political feasibility

All ACP countries have undertaken to negotiate EPAs. The opting out of LDCs is therefore not currently officially envisaged; however, it remains one of the most plausible scenarios, should some or all ACP LDCs decide that an EPA would not be in their best interest. The European Commission, although not favourable to such an outcome, would not oppose it.

6.1.6 A 'menu' approach: disentangling EPAs

Key features

This scenario is based on the existence of different development levels within the same ACP region as well as the diverse economic offensive and defensive interests of different countries. Many ACP governments and negotiators have repeatedly emphasised that an EPA, whatever its form, needs to recognise such differences and accordingly incorporate adequate flexibilities.

The 'menu' approach, explicitly advocated by the Pacific ACP countries,⁸⁴ takes such flexibility to the extreme. It envisages that the different components of an EPA (trade in goods and in services, investment, trade facilitation, possible sector-spe-

83 In addition, the rules of origin under the EBA initiative are less generous than the one prevailing under the Cotonou trade regime (notably with regard to cumulation), which could explain the low rate of utilisation of EBA by ACP LDCs, and the rules of origin that are likely to prevail in EPAs. See Brenton (2003) on EU preferences for LDCs and Manchin (2005) for non-LDCs, as well as Brenton and Manchin (2003) and Naumann (2005, 2006) for a discussion of rules of origin.

84 See 'Pacific Islands Forum Secretariat' (2004).

cific arrangements such as in fisheries, and so forth) could be covered under separate individual agreements. This flexible structure entails the ACP countries to be offered a ‘menu’: all countries in one region would sign a ‘master agreement’ establishing the principles to govern the EPA relationship but individual countries would be allowed to join only those specific ‘subsidiary agreements’ they were prepared to commit to. Pacific ACP countries, for instance, display a marked heterogeneity in terms of size, development and income levels, economic interests, state of preparedness for entry into reciprocal free-trade arrangements and available bargaining chips. It is therefore possible that some Pacific ACP States not yet ready to enter into an agreement with the EU for reciprocal free trade in goods may nevertheless be willing to join an agreement on fisheries, while for instance, some others willing to undertake free trade in goods may not be ready to conclude an agreement with the EU on trade in services. A ‘menu’ structure would ensure that all countries in a region could participate in the EPA, while accommodating the significant diversity among them and providing the flexibility required by the potentially negative effects of reciprocity.

WTO compatibility

For this scenario to be WTO compatible, reciprocal liberalisation commitments would be contained in the separate subsidiary agreements on trade in goods and trade in services. These would be the only agreements to be notified to the WTO under GATT Article XXIV.⁸⁵ Under the ‘menu’ EPA structure, the ‘umbrella’ agreement would exclude, instead, any specific commitments to reciprocal free trade in goods or services so that there would be no need to notify it to the WTO.

Regional integration

The ‘menu’ approach’ raises questions on both the membership and structure of a regional EPA. The possibility that one or more countries of the same ACP region might not take part in the subsidiary agreement on trade in goods or services (therefore opting most likely, at least temporarily, for GSP/EBA arrangements) would risk undermining the process of regional integration. Moreover, if the ACP and the EU agreed that non-trade components of an EPA could be treated separately from the agreement on trade in goods and services, then it is not clear why those subsidiary agreements (investment, trade facilitation, possible sector-specific

85 See ‘Pacific Islands Forum Secretariat’ (2004, p.24).

arrangements like fisheries, and so forth) could not be negotiated outside the EPA framework altogether. Such a flexible approach to the new partnership could indeed result in the complete disentangling of an EPA, with the new arrangements envisaged in Article 36 of the Cotonou Agreement restricted to trade, and the remaining areas of cooperation treated outside EPAs. The impact and the desirability of such a scenario, especially for those countries deeply concerned by the possible effects of reciprocal market access, would need careful consideration and analysis. As already noted for the 'EPA light' concept (Section 6.1.2), the major 'concession' that the ACP can offer is the reciprocal opening of their markets to European exports, and separating trade and non-trade components in negotiations with the EU would decrease the ACP's bargaining power.

Scope for development and policy space

On the other hand, if the 'menu' option kept the two elements together (although separate) under an EPA framework, it could make EPAs more attractive. First, for those who fear that EPAs are only about reciprocity, liberalisation of services and Singapore issues, the 'menu' approach would be a good strategy to convince the EU to bind not only concessions for further market access under EPAs, but also commitments to developmental areas, such as investment, trade facilitation/promotion, competitiveness-enhancing measures, and sector-specific agreements like tourism or agriculture. Second, the value of EPAs would also be increased for those regions and countries that demand strong provisions for special and differential treatment, as well as high flexibility, to cater for very diverse economic interests and different levels of preparedness for reciprocity.

Political feasibility

The political feasibility of this scenario remains uncertain. From an ACP point of view, the potentially very different treatment of different countries under market access arrangements, as well as non-trade areas, creates the risk of breaking up the ACP regions. From the EU perspective, it is probably not desirable to negotiate different issues with separate groups of countries in the same region.

6.1.7 Country-specific EPAs

Key features

ACP countries have all opted for a regional configuration to enter negotiations on EPAs with the EU. Even countries that do not formally belong to an ACP regional entity, such as Mauritania in West Africa and Sao Tome and Principe in Central Africa, have decided to negotiate with a regional grouping (ECOWAS and CEMAC, respectively). A priori, EPAs should thus build on regional integration processes, as stipulated in the Cotonou Agreement, and should be a regional affair!

WTO compatibility

The conclusion of EPAs may lead to a different scenario, however. Two considerations prevail here. First, there is a legalistic argument. While ACP countries have decided to negotiate as a region, none of them belongs to a customs union in the sense of GATT Article XXIV.⁸⁶ Hence, the ACP EPA regions (CARIFOUM, ECOWAS+, CEMAC+, ESA, SADC- and Pacific) do not constitute a customs territory in the sense of GATT Article XXIV. It follows that each ACP country will have to sign an EPA individually with the EU and to comply with the obligations of GATT Article XXIV.⁸⁷ Signing individual EPAs could merely be a procedural matter, as the agreements could be harmonised at the regional level under a regional EPA scheme. However, the fact that each country-specific EPA would have to be notified individually to the WTO might have far-reaching consequences. The point of reference (particularly in determining the threshold for ‘substantially all trade’ criteria, the degree of asymmetry and the product coverage and transition period) should be at the national level, and not the region. This might either provide greater flexibility for some countries that seek SDT in an EPA or impose more rigorous constraints, depending on the situation. A case-by-case analysis would thus be needed. Curiously, this point has so far been ignored by negotiators from all parties, ACP and EU alike.

86 The few existing customs unions among ACP countries (UEMOA, EAC, SACU, etc.) have not been notified to the WTO under GATT Article XXIV, but under the Enabling Clause, with the noticeable exception of the CARICOM Agreement, which was notified under GATT Article XXIV as an interim agreement for the formation of a customs union (L/4083 of 14 October 1974).

87 In the case of country-specific EPAs, another legal matter would arise in terms of compliance with WTO rules for the 23 ACP countries that are not WTO members. What obligations tie a non-WTO member in a bilateral FTA? What would ‘WTO compatibility’ mean in this case?

Regional integration and political feasibility

The second consideration is of a strategic nature. While all ACP countries have so far decided to negotiate an EPA at the regional level, a country may choose to opt out of the regional negotiations, either to seek alternatives to EPAs, or to conclude an EPA with the EU under its own terms. Here, particular country characteristics may play a crucial role. Small and vulnerable economies might opt for individual EPAs that would better suit their development needs and conditions. The proposal by the Pacific ACP is similar, as the 'menu' approach to EPAs might well result in individual national agreements signed by Pacific countries under a generic EPA umbrella for the whole region. Bargaining power and the size of the economy are most probably key factors as well. Should Nigeria opt out from an ECOWAS EPA, for instance, the EU would most likely conclude a side, individual, EPA with this regional economic power. Unless coordinated at the regional level, as proposed for the Pacific ACP EPA umbrella, country-specific EPAs could seriously disrupt regional integration, for reasons similar to those outlined in Section 6.1.5 on EBA instead of an EPA for ACP LDCs.

6.1.8 An all-ACP EPA

Key features

Following the signing of the Cotonou Agreement, some ACP countries and regions spent considerable time advocating an all-ACP EPA, an approach rejected, however, by West and Central Africa as well as the EU. As a compromise, it was agreed that the EPA negotiations would start, in September 2002, with an initial all-ACP phase before moving, a year later, to a second phase of regional negotiations. The first all-ACP phase failed to bring any substantive progress in the negotiations, leading to a loss of confidence in an all-ACP approach. However, as negotiations intensify at the regional level, ACP regions are often confronted by similar challenges. As a response, they have initiated more intensive informal inter-regional consultations.⁸⁸ Some voices have been calling for greater unity among ACP countries and regions, notably on issues of common interest, as identified in the 2002 ACP Guidelines for EPA negotiations.⁸⁹ Such considerations could lead ACP regions to sign an EPA framework common to all.

⁸⁸ Through regular informal exchanges facilitated by ECDPM, for instance, and the recent ACP meeting of EPA chief negotiators held on 4-5 October in London.

⁸⁹ ACP Council of Ministers (2002).

The drive for greater coordination among ACP regions on the content of EPAs has been heightened on the African continent with the strengthening of the African Union agenda. Indeed, the conclusion of widely different EPAs by African regions would risk undermining the objective of pan-African economic integration pursued under the aegis of the African Union. An African EPA framework could thus be envisaged.

WTO compatibility

Any EPA will have to comply with GATT Article XXIV, irrespective of its geographical configuration, including a single all-ACP-EU EPA. However, the agreement will have to be notified to the WTO by each customs territory (country or region⁹⁰), and not the ACP Group as a whole. This is mainly a procedural matter.

Regional integration

This scenario would be favourable to the regional integration process of each ACP sub-region, as well as the cohesion of the ACP group as a whole.

Scope for development and policy space

This scenario shares the same basic potential benefits and drawbacks in terms of development as the standard EPA case. The specific effects on development will depend on the scope and coverage of the EPA, as well as flexibility for SDT. The main difference, however, is that by signing a common EPA, the ACP Group could enhance its bargaining power, provided it can maintain a cohesive front (which has not always been the case).

Political feasibility

While this option remains possible in principle, the current position of both the EC and most ACP countries and regions is to pursue a regional approach to EPAs, with possible coordination and common approaches on some specific issue (such as rules of origin, for instance). An all-ACP EPA does not appear likely, at least at this stage.

⁹⁰ To be recognised as a customs territory by the WTO, a region must be a customs union under GATT Article XXIV (as in the case of the EU, for instance).

6.2 Scenarios of alternatives to EPAs

Another set of scenarios consists of abandoning the framework for reciprocal trade liberalisation adopted in the EPA process in accordance with Article XXIV of GATT on RTAs. Instead, finding alternatives to EPAs has been proposed, where the EU would provide preferential access for ACP products to its markets, without any reciprocity required.

6.2.1 Incomplete FTA with MFN liberalisation embodied

An innovative approach to trade agreements and development

Several concerns have been raised about: (1) the potential trade-diverting effects of an EPA,⁹¹ (2) the tendency in some ACP countries to postpone urgently needed economic reforms and to maintain high tariffs on some products, (3) the potentially negative effects of rushed liberalisation that does not allow for sufficient flexibility and appropriate accompanying measures (e.g., aid for trade), and (4) the loss of fiscal revenues that the complete elimination of tariffs would bring.

Recognising these limitations, Hoekman (2005) proposes an original option: ACP countries would enter into EPAs with the EU but would not be required to substantially liberalise all trade among the partners. Under the current FTA approach to EPAs, ACP countries have the tendency to seek to exempt the largest range of so-called 'sensitive' products from their tariff-liberalisation schedule, in an effort to limit the negative effects (notably on fiscal revenues) of abolishing tariffs. Instead, Hoekman suggests that ACP countries liberalise gradually on an MFN basis for all products. The objective is that tailor-made trade preferences from Northern partners to some developing countries be granted only in exchange for MFN-liberalisation commitments by the preferred countries, so as to promote, rather than undermine, the multilateral negotiations on trade liberalisation. A key feature of this option is that ACP countries would not be required to fully liberalise their trade. They could liberalise, for instance, to a uniform 10% MFN duty, as suggested by Hinkle and Newfarmer (2005), thus avoiding creating any trade diversion and keeping a buffer level of protection and 'policy space'.

91 See discussion in Section 4.1.

WTO compatibility

For this option to be viable, WTO rules would have to be significantly altered, either GATT Article XXIV or the Enabling Clause, as this proposal is obviously in violation of both provisions. An alternative would be to obtain a WTO waiver. In the case of a temporary waiver, the Hoekman option could facilitate the transition towards a complete FTA, while contributing to the Doha Round with the MFN liberalisation. Alternatively, a permanent WTO waiver could be sought, but this would amount to nothing less than a de facto change of WTO rules.

Regional integration

This scenario would foster greater openness in ACP markets in a non-discriminatory manner vis-à-vis all trade partners, while it would leave regional integration processes mainly unaffected.

Political feasibility

Besides the difficulties in obtaining the support of WTO members for this scenario, it is also worth noting that it runs contrary to the EU offer made to the G90 in May 2004 for a 'Round for Free', whereby the poorer developing countries (G90) would not be asked to reduce their level of protection.

6.2.2 GSP, GSP+ and enhanced GSP

An option already available?

The alternative to EPAs most commonly referred to is the EU generalised system of preferences (GSP),⁹² in one form or another. The current EU trade system entails FTAs, the Cotonou Agreement, the GSP and its specific EBA provisions for LDCs, and MFN duties. With the end of the Cotonou regime of preferences, the options available to ACP countries under the current EU regime of preferences are therefore an FTA/EPA or the GSP/EBA.

Taking into account the difficulties entailed in seeking a reform of GATT Article XXIV and the possible opposition of certain WTO members, many, especially among EC officials, consider the EU GSP the only real alternative to EPAs:

92 GSP Regulation No 980/2005, http://europa.eu.int/comm/trade/issues/global/gsp/index_en.htm

- ACP non-LDCs would benefit from the general provisions of the GSP for DCs, or enhanced market access if they can meet the conditions set under the provisions concerning the special incentive scheme for sustainable development and good governance of the GSP+, whereas
- ACP LDCs would fall under the special GSP provisions available to all LDCs (duty- and quota-free market access), the EBA initiative.

Criticisms of the GSP

The EC considers the GSP to be an inferior solution to an EPA, only 'second best', since it is a unilateral scheme covering only issues of market access (i.e., import duties and quantitative restrictions on goods) without any additional developmental dimension, as opposed to EPAs, which also aim to cover services and to address technical and trade-related barriers. Other common criticisms of the existing GSP include the following:

- The general GSP conditions for market access (tariff preferences, thresholds triggering the imposition of safeguard measures, rules of origin) are less advantageous than those in the Cotonou framework.⁹³ Moving from the Cotonou acquis to the GSP would contradict the provision in the Cotonou Agreement that, in the context of the new trading arrangements, no ACP country shall be worse off and 'on the Community side trade liberalisation shall aim at improving current market access for the ACP countries'.⁹⁴
- Since it is not a contractual arrangement, the GSP lacks predictability and therefore does not provide any incentive for investors.
- The graduation system included in the EU GSP reduces the appeal of this scheme as a long-term basis for the ACP-EU economic partnership.
- All developing countries are entitled to the GSP preferences, which further reduces the attractiveness of the GSP for market access for the ACP countries.
- Given that GSP schemes follow the principles of the WTO Enabling Clause, they cannot differentiate among non-LDC developing countries and therefore do not offer the flexibility requested by ACP countries to take into account the particular needs of small island and landlocked ACP States.

⁹³ ACP LDCs, however, already enjoy a greater level of preferences under EBA (duty- and quota-free market access) than under the current Lomé/Cotonou trade regime, although with different (arguably more restrictive) rules of origin.

⁹⁴ Article 37.7 of the Cotonou Agreement.

The new GSP system

The recent legal history of the EU GSP has partly confirmed this latter point, demonstrating that a preferential scheme can be challenged successfully at the WTO by those developing countries that are not beneficiaries of trade preferences offered by a developed country. In 2002, the Government of India challenged the special 'extra' preferences provided under the EU GSP to a selected group of developing states on the grounds that the EU was supporting them in the fight against the narcotics trade. Final judgement on the Indian complaint was reached in 2004 by the WTO Appellate Body, which found that the EU GSP was illegal, although it also stated that differentiation between countries within GSP schemes is acceptable provided it is related to objective and internationally accepted differences in developing-country circumstances. This development led to the adoption by the EU in April 2005 of a new GSP system comprising a larger range of products receiving preferences, a revised graduation mechanism, and an additional special trade regime, named GSP+. This attempts to make use of the Appellate Body's ruling that a certain degree of differentiation among developing countries is acceptable, and GSP+ offers better market access than the standard GSP to those countries that satisfy two criteria: 'vulnerability' (determined by indicators of smallness and lack of economic diversification) and commitment to human and labour rights as well as environmental and governance principles (ratification and implementation of several UN/ILO Conventions).

An 'enhanced' GSP

The critiques outlined above on the EU GSP's lack of attractiveness as an alternative to EPAs for ACP countries are still valid, but the recent ruling by the WTO Appellate Body, the subsequent reform of the European preferential scheme and the further review by the EU scheduled for 2008 create a fluid situation that could favour the adaptation of the GSP to make it a concrete, attractive and legal alternative to an EPA.

The fact that the EU GSP is a unilateral scheme with no contractual basis has been the object of debate for a long time. The former WTO Director General, Ruggiero, already suggested that the EU could autonomously make the GSP contractual by binding its concessions under the WTO. More recently, in the context of the reform of ACP-EU relations, the debate has included the possibility of creating an 'enhanced

GSP' with Cotonou-equivalent preferences to make it attractive to the ACP countries as well. Extending the GSP+ to incorporate all ACP exports and to improve its market-access preferences to the Cotonou level where they are inferior would constitute a WTO-compatible alternative to EPAs with definite appeal for ACP non-LDCs.

Stevens and Kennan (2005c) suggest that only about one-tenth of ACP exports are not already covered by the GSP+ and that their inclusion in it would not constitute a significant erosion of ACP preferences, either because competitors are not eligible for the GSP+ or they already benefit from duty-free access under separate trade arrangements with the EU. Therefore, the only cases of substantially 'less preferential' treatment than that provided in the Cotonou framework under the 'enhanced GSP' scenario would relate to products that benefit from the commodity protocols: sugar, bananas and rum. The ACP, however, will face serious difficulties with these products, regardless of the future ACP-EU trade regime, so one could question to what extent such erosion should be considered a negative aspect of the 'enhanced GSP'.

Instead of extending the GSP+ to incorporate Cotonou-equivalent preferences, a variant to this approach could be to reform the existing GSP system (adopted in April 2005) to create an 'enhanced GSP' comprising three special trade regimes: the GSP+, EBA for LDCs (including ACP LDCs), and a new 'ACP non-LDC preferential regime'. This scenario would solve up front the issue of preference erosion caused by the integration of the ACP into the current GSP. However, the challenge would still be to find objective criteria to justify this third type of differentiation (ACP non-LDCs) among developing countries. One option could be to limit the third additional special regime to the range of products that receive substantially 'less preferential' treatment in the GSP+ than in the Cotonou framework. In this case, it could be argued that the objective criteria relate to the historical export relationship between ACP non-LDCs and the EU, the important employment levels in those sectors and other related indicators (such a statistics-based exercise should not be difficult for products benefiting from commodity protocols, for example, sugar or banana for the Caribbean). This scenario would avoid contradicting the provision in the Cotonou Agreement that the new trading arrangement shall leave no ACP country worse off, although issues related to the unilateral nature of the GSP system and its graduation mechanisms remain.

In light of the possible negative impact of reciprocity of liberalisation commitments for the ACP, one of the main advantages of this type of scenario would be that the EU could justify at the WTO such new trading arrangements with the ACP—not under Article XXIV but under the Enabling Clause. This would therefore not require ACP reciprocity. Of course, the a priori exclusion of 21 developing states from the GSP+ could bring one of these states (India, the earlier complainer, for example, or Pakistan, now excluded but included under the old regime) to launch a WTO challenge. However, in the litigious environment that has developed in the WTO, no trade regime that differentiates between WTO members is entirely safe, EPAs included. Finally, the ‘enhanced GSP’ scenarios would not necessarily include issues like services, trade facilitation, SPS support, and other behind-the-border measures. It is certainly less ambitious than the EPAs, which might therefore make it incompatible with the EC’s current plans.

6.2.3 EBA for all

In terms of nominal market access to the EU, the EBA initiative offers the best trading framework: beneficiaries enjoy duty- and quota-free market access to the EU, whereas no element of reciprocity is required from them. Instead of limiting such a scheme to LDCs, possible scenarios might extend it to (1) all ACP countries (including non-LDCs), (2) the group of poorer countries (G90), or (3) all DCs.

For all ACP countries

Giving EBA treatment without reciprocity to all ACP countries, including non-LDCs, would contravene existing WTO rules: it would artificially discriminate among DCs, in contradiction to the Enabling Clause, and it would not cover the elimination of trade barriers on ‘substantially all trade’ among the parties, in contradiction to GATT Article XXIV. The only solution would thus be a WTO waiver or a change of WTO rules.

For all G90 members

A priori, the compatibility with WTO rules would also arise should the EBA be extended to all G90 members. However, should this group of poorer developing countries be officially recognised under WTO rules, as a result of the negotiations

on the Doha Work Programme,⁹⁵ an EBA for all G90 members could be compatible with the Enabling Clause. Such an approach would also seem to be consistent with the EU proposal of a 'Round for Free' offered to the G90.⁹⁶

For all DCs

Proposing EBA to all developing countries would amount to nothing less than substituting the GSP regime of the EU by the EBA provisions alone. This would of course be compatible with the existing Enabling Clause, but it would open the EU market to large, highly competitive, exporters, such as Brazil, China and India, among others, and is therefore a very unrealistic outcome.

6.2.4 Maintaining the status quo

A last option would be to prolong the current Lomé/Cotonou regime of preferences beyond the end of the 2007 deadline. This would require, in principle, the granting of a new waiver by the WTO or a change of WTO rules.

Two situations could be envisaged. First, in the case of the negotiations on an EPA not being completed on time (i.e., by the end of 2007, as foreseen by CPA Art.37.1 and indicated by the WTO waiver), the EU could agree to maintain the existing regime of preferences until the conclusion of the EPA. This delay could be just a few months (an outcome already envisaged by some negotiators), in which case no legal solution may be required: the date of entry into force of the EPA would be postponed to, say, the middle or end of 2008 on the basis of a common understanding among the parties. It is doubtful that the EU would request an additional waiver from the WTO for such a short period. After all, the waiver for the transitional regime of the Cotonou Agreement was granted only in November 2001, 17

95 The WTO recognises, and allows differential treatment between, only three categories of countries (developed, developing and LDCs). Although it is unlikely that a new group of DCs would be created (since paragraph 35 of the Doha Work Programme explicitly opposes that), the issue of further differentiation among DCs remains open, given the dramatic differences in levels of development and competitiveness between small and vulnerable economies and large emerging global players like Brazil, China, India.

96 In the letter by the European Commissioners Pascal Lamy (DG Trade) and Franz Fischler (DG Agriculture), sent on 9 May 2004 to all WTO members, the European Commission outlined its proposals for the continuation of the Doha Round, proposing, among other things, that less-developed countries (G90) should not be required to lower their trade barriers and should be granted greater access to the markets of developed and more advanced (G20?) developing countries, thus offering the G90 what the EC calls a 'Round for Free'. See http://europa.eu.int/comm/trade/issues/newround/pr100504_en.htm

months after the signing of the Cotonou Agreement in June 2000. This scenario would not constitute an alternative to an EPA, but just a minor postponement.

Alternatively, the EU and an ACP country/region or group might opt to continue for an unspecified period of time or on a permanent basis. This could be done without approval from WTO members, along the lines of the US African Growth and Opportunity Act (AGOA), which provides discriminatory preferential market access to the US for products from African countries that meet arbitrary conditions unilaterally determined by the US, and for which no waiver has been sought. In view of the binding commitment undertaken by the ACP and the EU and the insistence of the EU to adopt a new trade regime compatible with WTO rules, this option is, however, highly unlikely. The EU would thus have to either seek a new waiver for the continuation of the Cotonou preferences (with the risk of having its demand rejected by some WTO members—a likely outcome) or propose, together with the ACP, a change of WTO rules to allow for the perpetuation of the Lomé/Cotonou preferential regime. Again, both the EU and several WTO members seem unwilling follow such an approach, making the maintenance of the status quo a most unlikely outcome.

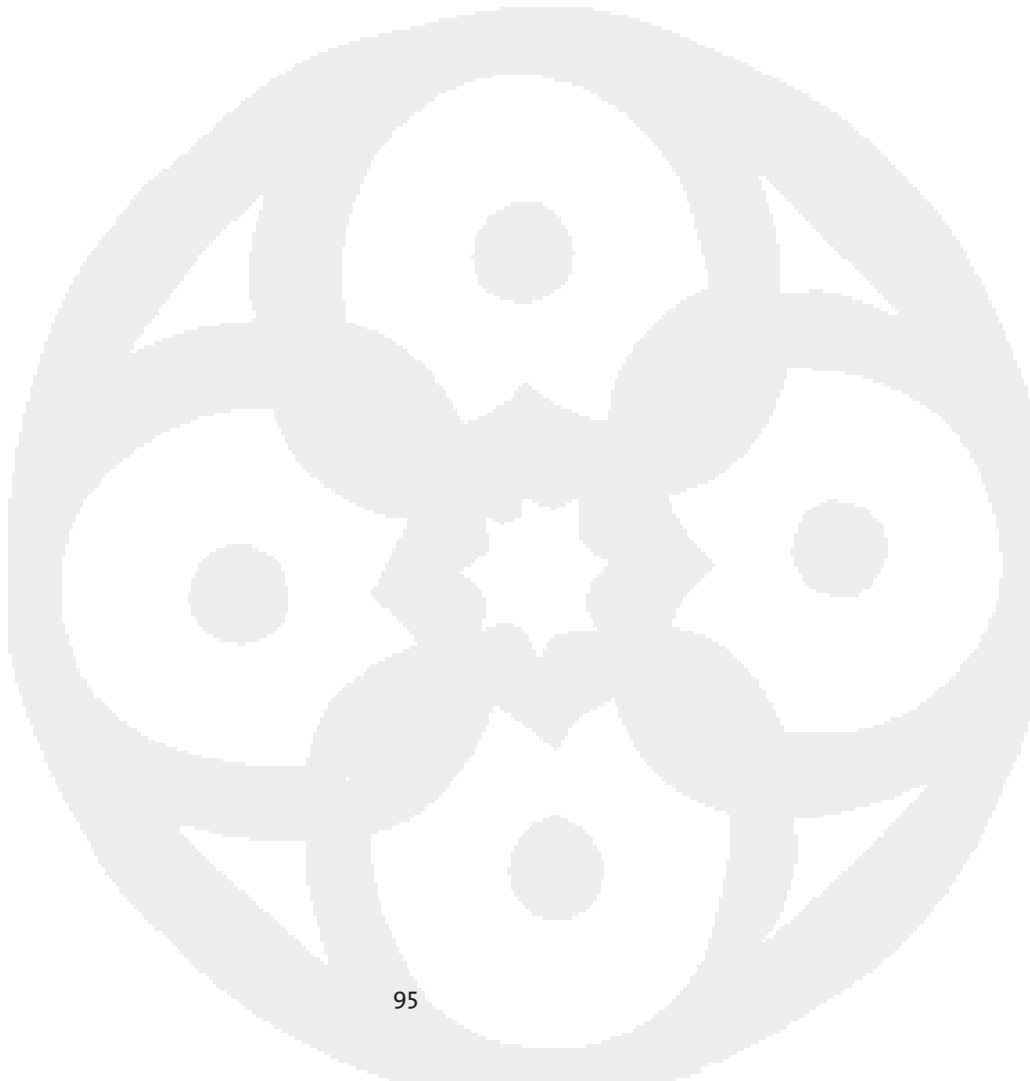
In addition to the paramount issue of WTO compatibility, the EU also believes that its unilateral preferential regime towards the ACP has not been successful in promoting the development of the ACP and therefore should be replaced by a new paradigm in the form of EPAs.⁹⁷ Since the EU is opposed to the continuation of the Lomé/Cotonou system (for reasons of both legal and development concerns), keeping the status quo is not a politically realistic option.



97 See, notably, Dihm (2005) and European Commission (2005b).

Chapter 7

Economic and developmental impact of different scenarios



7 Economic and developmental impact of different scenarios

This chapter first discusses issues related to the difficulties of properly assessing the economic and developmental impact of an EPA and possible alternatives to it (Section 7.1), and then presents existing attempts to do so, but with exclusive coverage of market access aspects of EPAs (section 7.2). It is therefore impossible at this stage to provide a meaningful ranking of the different scenarios reviewed in Chapter 6. A perhaps more fruitful approach would be to identify development benchmarks, based on transparent and clear criteria, against which the various EPA scenarios (as well as alternatives to EPAs) could be assessed. Such an approach is presented in Section 7.3.

7.1 Difficulties in the analysis

As discussed in Section 4.1, an empirical analysis of the impact of trade liberalisation poses a number of methodological problems. These are related to the validity of the assumptions made in the theoretical models used for the analysis, the availability and quality of data, and the complexity of assessing the dynamic effects of various factors, which are often interlinked. All this decreases the reliability of exercises in impact assessment. The difficulties are amplified when moving from economic impact to social impact, as issues related to poverty, inequality, food security or environmental sustainability are even more difficult to analyse, both theoretically and empirically.

In terms of economic effects, the scenarios discussed in Chapter 6 present too many uncertainties in possible EPA provisions to be used to predict the impact of each option on ACP economies. Those scenarios call for one or more of the following diversions from the 'basic EU EPA' (described as a benchmark scenario in Section 6.1.1), which have also formed the starting point for most of the impact-assessment exercises to date:

- lower degrees of reciprocity, depending on each ACP country's conditions, such as economic vulnerability or dependence on tariffs for government revenues;
- flexibility in treatment of individual countries, with the possibility of intra-

- regional differences, for instance an EPA for ACP non-LDCs and EBA for ACP LDCs (sub-Section 6.1.5) or even country-specific EPAs (6.1.7);
- possible degrees of competition with non-EU countries for the ACP as a result of EPAs, either internally (in the case of the ‘embodied MFN liberalisation’ scenario, for example) or externally (as in the case of EBA for all G90).

This makes the content of potential EPA arrangements too undefined to allow any analysis of the economic impact of the above scenarios, even qualitative analysis (let alone empirical assessment). In particular, no specific assumptions can be safely made on the extent of tariff reductions, which leaves little room for commenting on the impact of reciprocity of liberalisation commitments for the ACP. For these reasons, it was also impossible to rank the scenarios for alternative(s) (to) EPAs based on their positive and negative effects on ACP countries.

Providing such ranking would require in-depth country-level analysis, combining econometric research with a careful qualitative assessment of trends in international competitiveness, along with the economic interdependence of members of the same ACP region, as well as an analysis of the importance of tariff lines for each sector in the national economy.

Considering such difficulties in assessing the economic impact of different scenarios, it would be even more presumptuous to include an analysis of the social and developmental impact of alternative(s) (to) EPAs in this Study, which would result from the interaction of economic effects with social factors and political decisions by governments (on the distribution of the gains from trade liberalisation, for instance). This is very difficult to analyse and goes beyond the scope of this Study. Poor availability of data and uncertainty as to what indicators to use for assessing social impact would add to this complexity.

In addition, an analysis of social impact is not value free, and establishing a ranking of options based on their overall developmental effects would imply a greater degree of judgment and a priori decisions by the researcher than would be the case in an economic assessment. The choice of specific indicators to measure poverty reduction, for instance, requires an a priori decision about what exactly constitutes ‘poverty’ (is it an absolute or relative concept?) and whether income

variables are sufficient to capture the increase or decrease of people's welfare as a result of economic reforms. Similarly, establishing a ranking of options would imply judging what the priorities for development of an ACP country are. What is more important for development: employment generation, GDP growth or conservation of cultural values? Who should receive the larger benefits from a new trading arrangement: consumers or producers? The urban or the rural population? Large or small firms? Finally in the context of social-impact analysis, the definition itself of what 'development' is would be different if the analyst were an economist, an anthropologist or another social scientist. These kinds of discussions are important but they also fall outside of the scope of this Study.

The economic and developmental impact of different alternatives (to) EPAs will ultimately have to be judged by ACP and EU stakeholders and will also depend on national development strategies that ACP Governments implement along with trade reforms. This points to the need to conduct more country- and sector-specific analysis⁹⁸ because the scope of reforms and the size of the adjustment caused by EPAs (or alternatives to them) will be affected by the specific economic features of ACP countries, their degree of interdependence with neighbours, and many other factors. The impact of each scenario described in Chapter 6 will be determined by the exact content of the agreement(s) and the specific steps toward implementation that a government will take, such as the sequencing of economic reforms and other measures accompanying trade liberalisation. Moreover, it is impossible to anticipate government decisions on the balance to strike between those trade reforms actually implemented and the risks of adjustment. It is too early in the negotiations to assess all this.

As a matter of fact, the uncertainties surrounding the economic and developmental impact of EPAs and alternatives to them should provide an incentive for more efforts from all parties to research and discuss these issues more thoroughly. On the ACP side, certainly the side facing the most serious challenges, this would also mean strengthening the participatory approach towards EPA negotiations in order to undertake discussions and analysis and to urgently come up with comprehensive national positions on EPAs (to be compromised at the regional level) in line with key national development strategies.

98 See, for instance, PricewaterhouseCoopers (2005) and Eurostep (2004).

7.2 Preliminary assessments of alternatives

In spite of the difficulties raised, some attempts are being made to provide first estimates of some of the potential effects of alternative EPAs and alternatives to EPAs. These tentative empirical analyses focus exclusively on the market-access dimension of EPAs or their alternatives, ignoring all the other dimensions (trade and trade-related matters and accompanying measures) that strongly influence the development outcome of any new trade agreement.

These studies do provide some interesting insights, however, as one dimension of the discussion on EPAs does relate to market-access concerns, especially the extent of the reciprocal liberalisation to be undertaken by the ACP countries. To assess the impact of EPAs on their economies (in terms of government revenues and increased competition for local producers) and to make an informed decision on what 'appropriate' market access for an EPA would be, one needs to know which specific tariff lines will be subject to liberalisation (i.e., the specific product coverage) and under what timeframe.

7.2.1 The effect of product coverage

To help inform this process, Stevens and Kennan (2005a) developed a methodology and datasets to help ACP countries identify alternative options for protecting different sectors under an EPA. With a database on imports from the EU and applied tariffs, each ACP country can easily calculate what products can be included/excluded from liberalisation in order to achieve specific 'product coverage' (e.g., 80%). Through this exercise, ACP negotiators can simulate various options for protecting different sectors on the basis of different exclusion of products. This means, for instance, that if country A cannot liberalise rice (because it wants to stimulate local production), its negotiators can consider the levels of rice imports from the EU and compute what sectors to open alternatively, given their levels of imports. The dataset also allows the calculation of rough preliminary estimates of the potential size of loss of tariff revenues, depending on the product coverage considered. This feature is most helpful for countries that impose trade duties for fiscal purposes (as is often the case in developing countries) and which wish to maintain a certain amount of tariff revenue to avoid government budget deficits.

ACP countries can thus identify those products generating high revenues and those whose liberalisation should not significantly affect fiscal revenues.⁹⁹

Preliminary calculations by Stevens and Kennan (2005b), using this methodology, show that countries whose objective would be to maintain some highly protected products (notably for purposes of fiscal revenues) would not have to undertake fundamental market opening, even in the case of the EPA scenario as envisaged by the EU. To liberalise ‘substantially all trade’ while limiting the effects of market opening by maintaining trade protection where it matters most, it would be sufficient for many ACP countries to eliminate duties only on low-tariff items.¹⁰⁰ In considering the most appropriate product coverage for liberalisation within an EPA, each ACP country will have to balance the revenue-generating function of tariffs with the trade and development effects of maintaining protection for some products. Should the product coverage desired by each country differ significantly within a region, this might cause serious problems to their ability to agree on a regional strategy for EPA market access (i.e., to reach a consensual list of products to be excluded from liberalisation in a regional EPA).

7.2.2 Comparing Lomé/Cotonou, EPA and GSP options for market access

Abstracting from the issue of product coverage, Perez (forthcoming) argues that, based on simple considerations of market access, ACP countries would be better off opting for the EU GSP (i.e., EBA for ACP LDCs and the GSP or an enhanced GSP option for non-LDC ACP countries) than concluding an EPA. Confirming some of the negative welfare effects expected from EPAs by UNECA (2005a,b,c,d), Perez estimates that replacing the Lomé/Cotonou system of preferences by the EU GSP would have only limited negative impacts on the ACP, with the exception of the SADC and Pacific regions where the impact would be more significant. While some ACP agricultural exports will face higher tariffs, the GSP option should stimulate industrial output and avoid any intra-regional trade diversion and tariff revenue

99 Although the methodology proposed is rather crude, it allows ACP negotiators and officials to undertake quick and simple simulations to identify possible scenarios of product coverage for liberalisation. These first approximations should then be refined with a more sophisticated methodology to assess more precisely the impact of the specific pre-selected scenarios on tariff revenues (as well as other impacts).

100 For instance, if the 15 Caribbean countries were able to exclude 20% of their imports from any liberalisation, at present most could liberalise only items with a tariff of 20% or less.

erosion. An enhanced GSP option, which would better accommodate the interests of ACP countries,¹⁰¹ would further limit the effects of abandoning the Lomé/Cotonou preferences.

Table 4: The Market-Access Dimension: Implications of EPA and GSP Alternatives

	'Standard' EPA	GSP	Enhanced GSP
Welfare	-851	-459	-51
Real GDP	-183	-79	-9
Trade balance	-1,223	234	26
Fiscal imbalance (%GDP)	0.7%	0%	0%
Regional trade	-407	60	7

Source: Perez (forthcoming).

Without conducting any quantitative assessment, Stevens and Kennan (2005c) reach similar conclusions: the EU GSP, the GSP+ and, in particular, an enhanced GSP would provide market access broadly similar to the existing Lomé/Cotonou trade regime, with only limited erosion of preferences, although this could be significant for some countries and products (see Table 5, and discussion in Section 6.2.2).¹⁰²

¹⁰¹ For instance, by providing duty-free access to the 250 tariff lines of the ACP's most sensitive exports to the EU.

¹⁰² Hinkle et al. (2005, p.275) reach similar conclusions.

Table 5: GSP+: The Four Products for Which the ACP Might Experience Preference Erosion

Description ^a	Number of exporting ACP countries	ACP export value (\$ mil)	Main EU suppliers 2003 ^b	Value (\$ mil)	Competitor eligible for GSP+
Bananas	14	548	World	2363	
			Costa Rica	547	Yes
			Ecuador	530	Yes
			Colombia	464	Yes
Fresh table grapes	3	12	World	678	
			South Africa	262	No
			Chile	165	Yes
Rum	9	23	World	44	
			Cuba	17	Yes
Skins of sheep or lamb	4	16	World	139	
			Syria	45	Yes
			Saudi Arabia	18	No

Notes:

a) Descriptions have been simplified.

b) All non-LDC, non-ACP GSP beneficiaries supplying 10% or more of the EU market in 2003.

Source: Stevens and Kennan (2005, Table 8).

These studies provide valuable attempts to analyse the market-access dimension (as measured by tariffs only) of alternative EPAs or alternatives to EPAs. One of their major shortcomings, however, is their inability to integrate the other dimensions of development that could be included in a trade regime.

7.3 Development benchmarks

A useful approach in the direction of a more comprehensive assessment of EPAs and alternatives is represented by the 'development benchmarks' proposal as put forward by the ACP-EU Joint Parliamentary Assembly in 2002 and recently reiterated by an ACP Council Declaration. Using development benchmarks to assess the conduct and outcome of EPA negotiations and to ensure that trade liberalisation

works in favour of sustainable development would provide an important analytical tool for ACP negotiators. It would also strengthen the capacity on the ACP side to undertake comprehensive consultative processes to prepare for the negotiations. This would certainly facilitate and improve the broader discussions on the economic and development impact of EPAs and alternatives to them.

Ultimately, it is for ACP Governments and stakeholders to decide what a good EPA is (in a development sense) and to do this based on overall national development objectives and strategies. This is why a benchmarking exercise is complex but important. By setting development objectives (to be agreed upon by ACP and EU stakeholders) and comparing expectations for EPAs with actual provisions in the agreement, the 'benchmark' concept could assist those concerned in regard to the uncertain development content of EPAs by offering concrete options to ensure that such content materialises. Even those, like the EC, who believe the development content of EPAs is already there, would benefit from having a set of benchmarks for comparison, as they could facilitate their efforts to show that indeed current EPAs fulfil development expectations. This approach could become a tool for moving the discussions on the content of EPAs forward without jeopardising final judgments on whether an EPA is good or bad for ACP countries.

Aprodev and the International Centre for Trade and Sustainable Development (ICTSD) have initiated research on the possibility of having development benchmarks for EPAs. Given the lack of concrete progress on the development dimension of EPAs and the mounting frustration of ACP negotiators over the perceived dichotomy between rhetoric at the high political level in the EU and the pragmatic approach of EC negotiators (who only focus on the trade-related aspects of EPAs), this research¹⁰³ aims at establishing a basis for consensus on the development dimension of EPAs and offering ways to concretely incorporate development in the negotiations. According to ICTSD and Aprodev (2005a,b), three sets of development benchmarks should be developed to cover three particular aspects of the new partnership agreements: market access, development resources and policy space.

103 See ICTSD and Aprodev (2005a) and ICTSD and Aprodev (2005b) for a summary.

The ACP countries expect negotiations to lead to a development-friendly outcome on market access, with asymmetry in product coverage and implementation periods for liberalisation between the ACP and EU, better access for ACP exports to Europe (including strengthening the ACP's capacity to comply to SPS measures) and trade rules that stimulate value addition for traditional ACP commodities. The development objectives of improving access for ACP exports and protecting ACP markets when needed could, for example, be assessed against the following benchmarks:

- Does the elimination of EU tariffs and ACP tariff-reduction schedules, as negotiated under EPAs, ensure the asymmetry in liberalisation commitments justified by the very different development levels between the parties?
- Does the simplification of the rules of origin and elimination of tariff escalation concretely favour the insertion of ACP commodities into global value chains?
- Do EPA provisions constitute effective solutions to the negative impacts of certain EU trade-related rules (on TBT, SPS, EU Food safety, anti-dumping, CAP)?
- Does expeditious implementation of duty-free and quota-free access for all ACP countries and all exports mitigate the adjustment costs related to reforms in commodity protocols?
- Do the EU's concessions on services effectively implement liberalisation of temporary movement of workers from ACP to EU markets (Mode 4)?
- Are appropriate safeguard mechanisms and identification at the national and regional level of sensitive (special) products to be excluded from liberalisation assisting ACP countries in achieving objectives like food security, employment generation, macroeconomic balance?

ACP Governments also expect EPAs to deliver on the much-needed policy measures accompanying trade reforms and the related financial resources to implement them. Benchmarks to evaluate whether the quantity and quality of development resources are sufficient to ensure the implementation of accompanying measures and adjustments to sustainable development could include the following:

- Do the policy priorities defined and the programmes designed under EPAs at the national/regional level lead to reduced poverty in rural and poor regions as well as enhanced equity and not just economic growth?
- Do EPA provisions allow for additional accompanying measures and do they ensure informed allocations to assist the ACP in facing adjustment costs?

- Do EPAs address the problems of efficient delivery mechanisms for development cooperation in a concrete way?

Finally, on several occasions, the ACP has called for EPAs to maintain the ‘policy space’ required by governments to pursue their own strategies for economic, social, cultural, environmental and institutional development. According to ICTSD and Aprodev (2005a,b), this expectation could be translated into an EPA that provides for a coherent framework of support to both competitiveness and equity. Therefore, benchmarks on policy space should allow the assessment of whether the new agreements encompass the following:

- all flexibilities in trade rules needed to implement specific development policies on poverty alleviation, support to poor farmers, public health;
- avoidance of the closing-off of areas of potential growth and future structural change;
- appropriate supply-side policies fostering diversification, high value-added services, enterprise networks, innovative clusters, R&D;
- investment and government procurement rules that favour domestic enterprises and transfer of knowledge and technology.

These are examples of how discussions on development benchmarks could improve the current debate on the developmental impact of both EPAs and any alternatives to them. This approach could also help negotiators to push for development-oriented EPA provisions, support the design of a monitoring mechanism for political scrutiny of EPAs and accountability against development objectives, stimulate national and regional debates on identification of development priorities, and contribute to the capacity building of ACP state and non-state actors. This approach is still in its infancy and needs to be further developed in consultation with concerned stakeholders.¹⁰⁴ Until this kind of process is in place, it will be difficult to meaningfully assess the economic and developmental impact of different EPA scenarios or alternatives and to establish a ranking of options for ACP negotiators to choose from, based on their potential benefits.



¹⁰⁴ Aprodev, ICTSD and ECDPM have joined forces to this end.

Chapter 8

Concluding remarks



8 Concluding remarks

Clearly, the heated public debate on EPAs and the inevitable recurrent tensions in the EPA negotiations have increased attention on possible alternative trading arrangements between the ACP and the EU. These can be separated into two categories:

- (i) proposals that diverge from the EU-favoured position on EPAs, but which remain within the framework of a reciprocal free-trade agreement in conformity with WTO rules, possibly revised under the Doha Round;
- (ii) proposals that seek to break away from the concept of reciprocity as envisaged in EPAs.

Independent from legal arguments on WTO compatibility, reciprocity is indeed the most controversial element of the proposed EPAs, since, according to the ACP countries, it poses risks in terms of government revenues, regional integration, domestic production and employment, as well as policy space. In fact, even those ACP countries that seem to accept reciprocity lament the EU's underestimation of the adjustment costs brought about by a reciprocal EPA.

Alternative EPAs, which are FTAs in the sense of GATT Article XXIV, could be considered within the current context of EPA negotiations. All scenarios outlined under this category have the ultimate aim of better integration of the development objectives that EPAs aim to fulfil. The limit to their political viability remains, however, the extent to which they would comply with GATT Article XXIV. While negotiations on WTO rules are currently under way in the Doha Round, it would be unrealistic to expect any major overhaul of rules on RTAs. If ACP countries seek greater flexibility in these rules in order to provide better accounting of their development concerns, many other WTO members seem to favour either the status quos or even a strengthening of WTO discipline on RTAs. As a consequence, any revision of GATT Article XXIV, if possible at all, is most likely to focus on procedural matters and clarifications within the realm of the existing rules. The explicit recognition of development concerns in WTO rules regarding RTAs would, in and of itself, be a major achievement for the ACP. Such a pragmatic approach would also be more likely to benefit from the support of the EU.

In this respect, all alternative EPAs presented in this Study have the potential to be compatible with WTO rules and thus acceptable for the EU. However, the greater the flexibility sought (notably in terms of trade coverage and transition period) and the greater the legal uncertainty, the more risks there are that the agreement might be challenged at the WTO. The only alternative that clearly falls outside the current WTO approach to RTAs, and which would thus certainly face stiff opposition at the WTO, is the proposal to make trade liberalisation within an EPA conditional on binding commitments to development support from the EU or the reaching of agreed-upon development thresholds by ACP countries. Paradoxically, this is the scenario that has, in principle, the greater potential to be conducive to outcomes promoting development in the context of EPAs—that is, provided that objective criteria effectively related to development can be identified and agreed upon.

The second category of scenarios offers clear alternatives to EPAs in the sense of Article 37.6 of the Cotonou Partnership Agreement. Departing from the principle of reciprocal market opening embodied in EPAs, these scenarios rely on a preferential trade regime granted by the EU. As such, the EU GSP, or a reformed version of it, appears to be the most likely outcome. It is interesting to note that it should be possible for the EU to offer all ACP countries (i.e., including non-LDCs) preferential market access under its GSP, roughly similar (if not identical) to what they currently enjoy. All alternatives to EPAs, however, focus exclusively on standard market access, neglecting other trade(-related) matters. Depending on whether reciprocal trade liberalisation and broad coverage of trade issues at the regional level (as envisaged in EPAs) can benefit an ACP country or not, alternatives to EPAs can be perceived as either superior or inferior to the proposed EPAs in terms of development perspectives.

More generally, one of the major conclusions of this Study is that it is difficult to distinguish the debate on alternatives from the debate on what would constitute a development-oriented trade agreement. As a consequence, no attempt has been made to rank alternative EPAs and alternatives to EPAs according to their development impact on ACP countries. The reasons are twofold. First, the assessment of each scenario depends on the specific content of each agreement, which has not

yet been specified. Second, the development impact of any trade agreement ultimately depends on the prevailing environment in which it takes place and the *development objectives* of each partner (country or region). Hence, the development impact of the various scenarios may differ from country/region to country/region. There is no 'one size fits all' option.

In addition, the development impact of a trade agreement does not depend solely on its trade provisions; it depends also on the nature of the measures that accompany its negotiation and implementation, as well as the adequacy and effective delivery of any assistance provided. In this respect, it is important to bear in mind that the political feasibility of EPAs ultimately relates to their attractiveness to the ACP countries. This is determined not only by the specific rules for market access but also by the opportunities that an EPA offers to address the concerns of ACP countries in terms of their domestic production capacity (to solve supply-side constraints) as well as non-tariff-barriers (to turn opportunities for market access into actual access to markets). An appropriate package of accompanying measures and adequate financial resources to adjust to the potential costs of EPAs could also prove to be decisive for the ACP countries that find it difficult to assess whether the proposed EPAs are superior or inferior to alternatives.

Despite the difficulties in ranking the scenarios presented, this Study provides valuable guidance for assessing them. Besides clarifying a range of options available, it also provides key characteristics to consider for their assessment: the degree of market-access opening (including the level of reciprocity and duration of the transitional period), compliance with WTO rules, the influence on regional integration, the scope for development-oriented outcomes and political feasibility.

Finally, this Study also suggests a possible way forward in assessing the development dimension of the range of scenarios proposed: to define development benchmarks. Once a sound methodology has been put in place, this approach should allow each ACP country and region, through a widely participatory and consultative process, to identify for itself the benchmarks that would guide its EPA negotiations and the relevance of various alternative trade regimes in relation to its overall national or regional development strategy.

In this context, both the ACP and the EU should seize the opportunity of the 2006 Review of EPAs to assess the whole process of the EPA negotiations so far, as foreseen in CPA Article 37.4. This comprehensive formal review would provide the perfect opportunity to make changes in the negotiations, where necessary, and, if necessary, to propose alternative routes, the pursuit of which would require, first and foremost, political will. The year 2006 will be crucial!

Table 6: Overview of Alternative Scenarios to/for EPAs

	Scenarios	Key features	Market access	WTO compatibility
Alternative EPAs	EPA	Reciprocal FTA+	75%-80% ACP; 99%-100% EU; 12-15 more years?	FTA under Art. XXIV
	EPA light	Reciprocal FTA	50%-60% ACP; 100% EU; > 20 years	Aim to be WTO compatible; borderline under existing rules
	EPA SDT	Reciprocal FTA+ with flexibility	Lower threshold for ACP; Longer transition period	Explicit clarification or change of rules required
	EPA Development thresholds	Conditional reciprocal FTA	Dependent on development thresholds	Requires change of rules
	EPA for non-LDCs	Non-reciprocal free market access for LDCs	None LDC; 100% EU	Enabling Clause
	EPA 'Menu approach'	FTA à la carte	90% average; but scope and coverage country specific	If market access conditions met, FTA under Art. XXIV
	National EPA	Reciprocal FTA+ at national level	65%-85% country specific; 99%-100% EU 12-15 more years?	FTA under Art. XXIV
Alternatives to EPAs	All-ACP EPA	Unique reciprocal FTA+ between all ACP & EU	About 80% ACP; 99%-100% EU; 12-15 more years?	FTAs under Art. XXIV need to be notified individually
	FTA with MFN liberalisation	Incomplete FTA = hybrid agreement	MFN liberalisation, > 0 ACP; 100% t=0 EU	Requires change in WTO rules
	EBA for all ACP	Non-reciprocal free market access for all ACP	None ACP; 100% EU	Violates the existing Enabling Clause; requires change of rules
	EBA for G90	Non-reciprocal free market access for G90	None G90; 100% EU	Could fall under existing Enabling Clause; or clarification needed
	EBA for DCs	Non-reciprocal free market access for DCs	None DCs; 100% EU	GSP under Enabling Clause
	GSP(+)	Preferential access for DCs	None ACP; Slightly worse than Lomé for ACP non-LDCs to EU	GSP under Enabling Clause, may or may not be fully compatible => risk of challenge
	Enhanced GSP	Preferential access for DCs	None ACP; Equal or better than Lomé for ACP non-LDCs to EU	Questionable WTO compatibility (as GSP(+))
	Status quo	Lomé/Cotonou preferences	None ACP; 97% Lomé EU	Requires a waiver or change of rules

Regional integration	Scope for development and policy space	Political feasibility
Possibility to strengthen RI 'à marche forcée' and/or create tensions undermining RI	Driven by EPA&RI agenda, based on EU example	Current support of EPA negotiators and EU political masters, but possible tensions between EU and some ACP
Allow to focus on RI agenda, de-linked from EPA	Besides market access, complete policy space	No constraints, but possible loss of bargaining power and momentum by ACP
RI facilitated if coordinated flexibly	Flexibility in policy space and explicit recognition of development concerns	Acceptable to all if compatible with WTO rules; favoured by ACP
Complicated if no regional benchmark	Guaranteed policy space and development criteria	Revision of Art. XXIV not supported by most WTO members
Jeopardised if non-LDCs alone sign EPAs	Split approach between non-LDCs and LDCs	Not desired by the EU, but possible outcome if requested by ACP
Helpful differentiation, or dissention if lack of coherence at regional level	Tailor-made FTA fitting development concerns of countries	Acceptable by EU as an exception rather than rule
Could be more complex if incompatible national EPAs	Dependent on country characteristics or bargaining power	Opposed by EU, but possible on the margin, for exceptional cases
Conducive to RI	Possible improvement if cohesive ACP approach	Unlikely at this stage, due to EU attitude and tensions within ACP Group
Not affected	Maintained	Not realistic revision of rules under Doha Round
Not affected	Total for all ACP	Dependent on EU position, but unlikely under existing Enabling Clause
Not affected	Total for G90; Preference erosion for ACP	Dependent on EU position, currently not considered
Not affected	Total for all DCs; ACP erosion of preferences	totally unrealistic for the EU
Not affected	Total for all DCs; erosion of preference for ACP	Option currently already available
Not affected	Total for all DCs; erosion of preference for ACP	Could be considered by the EU in 2008
Not affected	Total for all ACP	Opposed by EU

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Appendix: Comparative overview of key quantitative results from impact studies on EPAs

Table A1 - Trade creation versus trade diversion

	Trade Creation (mil. USD)	Trade Diversion (mil. USD)	Intra-REC diversion (mil. USD)	Trade created per unit of trade diverted
SADC	272.3	-78.4	-0.7	3.5
ECOWAS	1504.4	-361.6	-31.1	4.2
COMESA	909.9	-242.7	-14.1	3.7
CEMAC	607.9	-87.3	-1.6	7.0

Source: UNECA (2005a).

Table A2 - CEMAC (mil. USD)

	Trade Created	Trade Diversion	Trade created per unit of trade diverted	Revenue Loss	Consumer Surplus
	UNECA ^a	UNECA ^a	UNECA ^a	UNECA ^a	CRETES ^b
Cameroon	255.4	-26.6	9.6	-149.3	-130.7
Congo Rep	123.7	-20.5	6.0	-75.1	
Gabon	126.5	-27.7	4.6	-74.3	-121.6
Eq. Guinea	53.3	-5.4	9.9	-33.9	
CAR	8.2	-1.3	6.3	-5.8	-14.5
Chad	40.7	-5.9	6.9	-26.7	
CEMAC Total	607.9	-87.3	7.0		

Notes: a) UNECA (2005a,e) b) CRETES (2003) presents the estimates in the local (CFA) currency. For reasons of comparison, these estimates have been converted in US dollars

Table A3a - ECOWAS (mil. USD)

	Trade Creation		Trade Diversion		Trade created per unit of trade diverted	
	<i>UNECA^a</i>	<i>Busse^b</i>	<i>UNECA^a</i>	<i>Busse^b</i>	<i>UNECA^a</i>	<i>Busse^b</i>
Ghana	267.8	45.8	-101.9	-40.2	2.6	1.1
Burkina-Faso	40.5	14.1	-9.2	-9.8	4.4	1.4
Beninc	61.1	20.4	-14.1	-10.7	4.3	1.9
Cote d'Ivoire	188.8	69.3	-26.4	-25.3	7.2	2.7
Guinee-Bissau	2.8	1.6	-0.3	-0.3	9.3	5.3
Senegal	144.6	71.2	-16.3	-31.4	8.9	2.3
Niger	39.5	4.6	-4.3	-3.5	9.2	1.3
Nigeria	617.7	348.3	-172.9	-229.1	3.6	1.5
Mauritania	28.5	9.8	-5.3	-5.4	5.4	1.8
Mali	54.7	13.3	-4.5	-8.3	12.2	1.6
Togo	58.3	10.1	-6.5	-6.5	9.0	1.6
Gambia		8.2		-5.8		1.4
Cape Verde		16.9		-4.5		3.8
Guinea		14.3		-10		1.4
ECOWAS Total	1,504.4	608.5^d	-361.6	-370.5^d	4.2	1.6^d

Table A3b- ECOWAS continued

	Revenue Loss			Consumer Surplus	
	UNECA ^a	CAPE ^b	Busse ^d	UNECA ^a	CAPE ^b
Ghana	-193.7		-90.8	71.5	
Burkina-Faso	-22.0	-126.6	-17.5	3.8	158.9
Beninc	-39.5	-167.9	-27.6	6.6	192.3
Cote d'Ivoire	-112.2	-723.5	-82.9	16.2	994.3
Guinee-Bissau	-2.0	-15.3	-2.2		18.9
Senegal	-80.2	-609.7	-87.9	12.5	755.3
Niger	-20.5	-72.4	-6.6	3.9	95.9
Nigeria	-426.9		-487.8	113.3	
Mauritania	-14.6		-11.8	2.5	
Mali	-33.1	-212.5	-16.6	4.5	265.3
Togo	-35.5	-78.4	-12.9	5.5	95.5
Gambia			-13.8		
Cape Verde			-24.0		
Guinea			-16.7		

- Notes:
- a) UNECA (2005a,b).
 - b) CAPE (2003) presents the estimates as percentage of GDP in 2001. For reasons of comparison, these estimates have been converted into US dollars.
 - c) The study by Ministère des Finances et de l'Economie estimates the revenue loss at -325.4 million US dollars and the consumer surplus at 491.7 million dollars. The study reports estimates in local (CFA) currency. For reasons of comparison, these estimates have been converted into US dollars.
 - d) Busse et al. (2004) give estimates using three scenarios. In this paper only the estimates in the 'medium' scenario are reported. However, even the values for the 'high' scenario are well below those reported by UNECA (2005a,b).

Table A4a - ESA & SADC (mil. USD)

	Trade Creation		Trade Diversion		Trade created per unit of trade diverted	
	UNECA ^a	Tekere ^b	UNECA ^a	Tekere ^b	UNECA ^a	Tekere ^b
ESA						
Burundi	12.4		-1.6		7.8	
DRC	45.4		-6.8		6.7	
Ethiopia	120.7		-31.2		3.9	
Eritrea	13.1		-1.4		9.4	
Djibouti	56.5		-9.6		5.9	
Kenya	211.3		-60.5		3.5	
Madagascar	16.6		-4.1		4.0	
Malawi	15.1	18.4	-6.5	-14.1	2.3	1.3
Mauritius	166.9	136.5	-44.7	-87.5	3.7	1.6
Rwanda	10.6		-3.1		3.4	
Seychelles	25.3		-2.7		9.4	
Zimbabwe	45.6	82.9	-17.6	-21.5	2.6	3.9
Sudan	119.6		-33.5		3.6	
Uganda	19.2		-9		2.1	
Zambia	31.7		-10.4		3.0	
ESA Total	909.9		-242.7		3.7	
SADC						
Angola	174.5		-39		4.5	
Botswana	9.3	25.7	-4.1	-0.6	2.3	42.8
Lesotho	0.5		0			
Mozambique	16.5	21	-5.9	-6.5	2.8	3.2
Namibia	7		-3.8		1.8	
Swaziland	1		-0.5		2.0	
Tanzania	63.5	103	-25.1	-78.8	2.5	1.3
SADC Total	272.3		-78.4		3.5	

Sources: a) UNECA (2005a,c,d); b) Tekere and Ndlela (2002).

Table A4b - ESA & SADC continued (mil. USD)

	Revenue Loss		Consumer Surplus	Welfare	
	UNECA ^a	Tekere ^b	UNECA ^a	WTO ^c	
				EU-SADC	EU-SADC& SADC
ESA					
Burundi	-7.7		1.8		
DRC	-24.7		3.8		
Ethiopia	-55.1		19.0		
Eritrea	-7.4		1.2		
Djibouti	-37.5		10.9		
Kenya	-107.3		30.7		
Madagascar	-7.7		0.9	-6.0	-6.6
Malawi	-7.1	-24.6	2.1	64.8	72.5
Mauritius	-71.1	-209.9	57.6		
Rwanda	-5.6		0.9		
Seychelles	-24.9		8.1		
Zimbabwe	-18.4	-118.3	8.2	257.2	268.8
Sudan	-73.2		19.2		
Uganda	-9.5		1.7		
Zambia	-15.8		3.4		-3.8
SADC					
Angola	-103.3		14.9		
Botswana	-5.2	-32.4	0.4	-124.1	-133.6
Lesotho	-0.3		0.1		
Mozambique	-7.6	-29.2	1.7	-9.4	-9.6
Namibia	-3.8	-285.3	0.2		
Swaziland	-0.8	-5.6	0.1		
Tanzania	-32.5	-146.6	8.2	-50.2	-60.4

Sources: a) UNECA (2005a,c,d); b) Tekere and Ndlela (2002); c) Keck and Piermartini (2005).

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ISBN-10: 90-72908-29-5 ISBN-13: 978-90-72908-29-2