

Exploring ACP responses to the EU proposal for Regional Economic Partnership Agreements

In their negotiating mandate for a successor agreement to the Lomé IV Convention, the ACP strongly adhere to a status quo position on trade, i.e. keeping the current preferential system. While this may be the best short-term option for tactical purposes, it may suffer from a lack of realism in the long-term. Alternative positions could be explored, including ways to accommodate EU proposals for free-trade agreements with ACP regions. This Brief brings together the main conclusions of a two-day seminar, in which ACP and European experts — and for the first time ACP regional bodies — met with the ACP Secretariat and Ambassadors to reflect on these issues.

Trade with Europe after Lomé-IV: The ACP Position

Negotiations on a successor to the current Lomé agreement began in September 1998, with trade as a major bone of contention. For the ACP, the only certainty is that current preferential market access provisions will technically end in 2000, at least for non-LDCs. Instead, the EU wants to establish free-trade agreements with ACP regions — as the basis for a set of “Regional Economic Partnership Agreements (REPAs)”.

By contrast, the ACP negotiating mandate calls for improved non-reciprocal trade preferences from the EU. It also takes account of European wishes, accepting REPAs as an option, but with strong qualifications. It is stated that ACP States must “consider carefully the implications of such agreements which, in any case, should be voluntary”.

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The ACP mandate also leaves the door open to “alternative trade arrangements”, suggesting that the ACP position on trade could still evolve as the negotiation process moves on. Why is this?

First, the ACP position reflects *internal compromises between ACP Member States and regions*. It was easier for 71 different states to agree on the proposal for an improved status quo, than on any alternatives involving major changes. Agreement within the EU on such changes was more straightforward because, unlike the ACP, Europe represents a single commercial entity, with a single negotiating body (the EC). Second, given the uncertain outcomes, the stakes are much higher for the ACP. They have much more to lose than Europe. Finally, like in the previous negotiations, the balance of power between the two parties favours the EC.

Wishful Thinking?

The ACP official position suffers from a seminal weakness in that its thrust — keeping non-reciprocal, discriminatory preferences — is only a temporary solution, as the ACP themselves recognise. The only way to keep, or improve, these preferences without extending them to non-ACP countries is to get the EU to ask WTO Members for a second waiver for Lomé. Such a waiver needs to be limited in time. The ACP would like this waiver to go beyond the five years proposed by the EU as a means of transition, and ask for ten years instead.

Is this realistic? The answer is not certain. There are no clear rules on how waivers are granted in the WTO: They are usually granted as a matter of political expediency and after intense negotiations between Members. The view has been expressed that a WTO waiver may not be granted for a period exceeding ten years, but since the rules are silent on this issue, it could be granted for a longer period, depending on the circumstances of the case. EU and ACP members of the WTO could argue that they want to form a free-trade area, but given the great disparity in the levels of economic development between the parties, they need a waiver to enable the ACP states to adjust to the new competitive environment.

Against this background, the waiver solution may not be a very safe bet for the ACP. Not that it would be necessarily difficult to obtain, as a majority of WTO members may well be sympathetic to the Lomé case. It would, however, require intense lobbying by the ACP and the EU in Geneva, for which the ACP do not seem to be prepared. It would also require a lot of “horse-trading” by Europeans. Here the main obstacle is that the EU itself has been very firm so far in its refusal to try and negotiate a WTO waiver of more than five years.

The REPAs Option

Reactions to the EU proposal

Some in the ACP consider that the ACP must give a comprehensive response to the EU proposal for REPAs. Some ACP regions, for instance, are willing to consider this option and want to look into the potential benefits. In particular, they underline the necessity to consider it in a dynamic perspective: In certain cases, trade liberalisation could be an incentive to implement much-needed fiscal reforms, which might partly make up for losses in customs duties.

Some argue that “regionalising” *the negotiations* could benefit the ACP. They suggest that ACP trade interests would be best defended by representatives of the different ACP regions, or countries, along the principle of subsidiarity. This would open several negotiating “fronts” or levels. Regional negotiators would be better aware of the particular sectoral interests at stake for regional producers (minerals in Central Africa, fish in the Pacific, etc.). In order to avoid a fragmented trade agreement, an “MFN- type” clause would ensure that any gain by one region would automatically be extended to the whole ACP group (probably with the exception of the commodity protocols).

Crucial issues need to be clarified

Participants at the seminar underlined several issues of concern for the ACP in the EU proposal for REPAs:

- The future of protocols, to many the most valuable element of the Lomé trade regime, remains uncertain. The ACP need firm guarantees on these.
- The EU mandate is vague on the relaxation of rules of origin.
- The risk of CAP-subsidised agricultural products entering ACP markets on preferential terms is still present.
- No improvement of market access is proposed, neither in terms of lowering the remaining tariffs nor — more importantly — in terms of removing the non-tariff barriers to ACP products.
- European commitment to increase its support for improving the competitiveness of the ACP is not clearly spelled out.
- The GSP revision, scheduled for 2004, should be included in the ACP-EU negotiations, as the outcome will considerably influence the non-LDCs in their choice to join (or not) the proposed REPAs.

More information is needed

Most participants called for further analysis. In spite of the impact studies released by the EC [see forthcoming Negotiating Brief 5] the ACP feel they still lack a clear ACP perspective on the viability of REPAs as a “blueprint” for future cooperation. Prior to any agreement, they want to make sure that they have much more solid data on strategic issues. This may call for the ACP to conduct their own assessments of REPAs, in consultation with regional bodies and the private sector.

The point was also made that the ACP should be aware of the special dispositions in the WTO — often under-utilised — that are meant to protect and benefit developing countries. For example, any ACP-EU agreement should go above and beyond what is already committed in the WTO arena on non-tariff barriers, intellectual property, trade-related investment measures, or protection of the ACP bio-diversity.

Other Options?

Opposition to REPAs is strong...

Arguing against the above, many voices stress that REPAs are neither desirable, nor feasible:

- While trade liberalisation can carry economic benefits, bilateral free-trade agreements between

regions are a third-best solution, compared to unilateral or multilateral opening.

- ACP regions are not yet ready, and probably will not be for a long time.
- The great diversity of situations, levels of development and interests *within* regions make agreement on a common move towards REPAs very difficult.
- Capacity, in the ACP and the EC, to negotiate and implement such agreements, may be inadequate.
- The constitution of ACP regions can not be driven from the outside. By wanting to rush things, the EU might do more harm than good. Local ownership of the development agenda, including regional co-operation and trade policy, remains critical.

... *but is there a "third way"?*

It seems that most people in the ACP support the status quo, in spite of its limited future, for want of any alternative. By fostering the idea that the ACP can only choose between an unrealistic solution (the REPAs) and one whose only fault is WTO-incompatibility (the status quo), the ones who say the current regime should remain hope to force the latter on EU and WTO members.

There is little incentive for proponents of the status quo to be precise on the content of an "alternative" trade arrangement: A majority within the ACP seem to support, as a negotiating tactic, a "no-retreat" position until the possibility of an extended waiver truly disappears. As a result, the only real possible compromise emerging from the debate is not a truly *alternative* arrangement, but REPAs that would be "softened" to be acceptable to the ACP.

Are "soft" REPAs the way forward?

Strictly WTO-compatible REPAs would have to be put in place within "a reasonable period of time" i.e. about 10/12 years, and cover "substantially all trade", i.e. not exclude too many products nor any major sector, such as agriculture. When considering the REPA scenario, the ACP see these constraints as forcing too much liberalisation, too soon. They ask for longer transition periods and a greater exclusion of sensitive products, i.e. a form of *soft* REPAs.

WTO rules: flexible, or just vague?

Like for waivers, however, WTO rules on FTAs are unclear, and the concept of *WTO compatibility* itself is subject to interpretation by each negotiating party. For instance, the meaning of "substantially all trade" is still

ambiguous: A proposal to interpret it as covering 80 per cent of traded goods was rejected by the WTO. Another proposal for 90 per cent is being considered. There are few lessons to be drawn from the experience of the Regional Agreements Committee either, as all the reviews of regional agreements so far notified to the WTO have been inconclusive.

This ambiguity adds considerable confusion to the post-Lomé IV trade debate, and it hinders the formulation of the ACP position on REPAs. Some can always argue that a flexible interpretation of WTO rules is possible, and that they provide enough room for "soft" ACP-EU REPAs. This could be risky, however: The rules may be vague, but they still allow third countries to challenge any agreement that they believe is inconsistent with the relevant rules of the WTO, or simply prejudicial to their trade interests (cf. the Banana case). Actually, the challenging country does not need to establish that there has been a violation of rules to initiate a case. Hence the necessity for the ACP and EU to be extremely careful about the wording of any agreement (or in their demands for waivers to WTO members). Participants in the meeting stressed that the ACP should make sure they consult adequate legal expertise on these matters.

Change the rules?

Some say that WTO rules are "not carved in stone" and could be changed to explicitly allow for soft REPAs, which, strictly speaking, would not be in conformity with present rules. For instance, it was proposed that the rules defining the duration of transition periods should not impose *time frames* (numbers of years), but instead outline *prerequisites to liberalisation*: The ACP economies would gradually open to EU products only when they reach certain thresholds, e.g. in terms of "sufficient" level of competitiveness of their industries, or lower level of reliance on custom duties by governments. Others said that Article XXIV (on FTAs and Customs Unions) could simply be changed and the constraint on free-trade agreements made looser.

It was noted, however, that the ACP should not rely on joining forces with Europe to alter WTO rules. First, in spite of the reassurance orally given by the EC that it could support some flexibility with WTO rules, the official EU mandate is quite strict on WTO compatibility. Second, the EU may be less powerful than some think. It does not dominate the WTO and it could not obtain such changes for the ACP without the consent of other members. Third, not necessarily all the actors in the EU would support such attempts to alter multilateral rules. Should the EU find itself in a position to weigh the interests of the ACP against its own responsibilities as a global economic actor within the

multilateral system, it is not certain that the former would prevail.

Avoiding a Bad Compromise

The EU wants the ACP to sign a *framework agreement* by 2000. ACP and EU experts in the meeting stressed the serious risk of an agreement that is too open-ended, both unclear on the nature of future relations between the parties, and vulnerable to challenge from the outside.

Sign a detailed agreement

Time is short (15 months) before Lomé-IV bis expires, and incentives are strong on both sides to reach *some form* of agreement by 2000. The risk is therefore high that the ACP commit themselves to the *principle* of REPAs, or other trade arrangements, but in terms which, although reassuring, would be too general to offer a firm guarantee as to what the *real content* of these agreements would be. There was a broad consensus in the meeting that ACP should seek a framework agreement *as detailed as possible*, so that they know precisely what future challenges and opportunities it entails, and avoid “bad surprises”. It was noted that those details could be worked out only if *regional specialists* are involved.

Emphasis was also laid on the necessity to create *safety nets* that are really safe. For instance, the ACP have been given a very loose reassurance that the GSP, probably a fall-back position for many non-LDCs, will be significantly improved. Similarly, the provision in the EU mandate that no ACP country should be worse off than under Lomé-IV seems quite vague.

Make sure the agreement cannot be challenged

By making concessions on the duration of transition periods, on the exclusion of sensitive products, or on the possibility to reverse trade liberalisation, the EU may get the ACP to sign up for “*soft*” REPAs. But any WTO member could challenge these agreements as incompatible with Article XXIV. It was recalled that the trend within the WTO was towards a stricter, rather than a looser, interpretation of the latter. Should a panel rule against the ACP-EU agreements, the EU would have to apply the GSP to the ACP, in spite of any previous agreement.

Even in the “ideal” situation where the EU would obtain an *extended waiver* from the WTO — allowing non-reciprocal preferences to last for, say, ten or even fifteen years —, such a waiver could be challenged just

the same under the WTO. In such a case, the terms of the waiver may prove to be determinative.

Do not forget other trade negotiations

It was underlined that gains in the Lomé “battle” would not be enough to win the “war” of a better insertion of ACP economies in international trade. Indeed, the value of any ACP-EU trade agreement will partly depend on external factors, which, although beyond the reach of the parties, must be kept in mind. For instance, for many products, any improvement in preferences may be wiped out by the outcome of the forthcoming round of multilateral trade talks in 2000.

An ACP Action Plan for the Negotiations

With slightly more than one year to go before the negotiations for a successor agreement to Lomé IV are to be concluded, ACP negotiators asked independent trade experts to feed them with ideas and alternatives. With this in mind, the following action points are proposed:

- The main conclusions of the REPA studies should be examined in more detail. The experience of Euro-Mediterranean free-trade agreements should also be assessed.
- The ACP regions should undertake their own studies on the impact of regional economic partnerships, taking note of the views of regional actors and stakeholders.
- At the multilateral level, ACP policies should be coordinated and stronger technical and political links be cultivated with the WTO and UNCTAD.
- A stronger involvement of ACP regional bodies should be ensured in the negotiations. This will require a number of capacity building efforts. As a first step, it has been proposed to enhance mutual information flows between the Brussels-based negotiating actors (e.g. ACP Secretariat) and the regional bodies to build common understanding on some of the most sensitive negotiating issues. The creation of a Regional Economic Communities Network (*Collectif des communautés économiques régionales*) was also suggested.
- ACP experts stressed that additional efforts at the regional level or in Geneva will be of little help to ACP negotiators and representatives without adequate backing from their own governments. For many ACP governments, trade policy is not a priority, and capacity to deal with international trade issues or the multilateral system remains low. The principle of opening has often not been *internalised* as an economic strategy that can yield

benefits, resulting in a defensive attitude towards possible changes in existing regimes and trade liberalisation in general. Clearer and more proactive *national* trade strategies are therefore needed if the ACP are to make their case in international trade negotiations.

- Finally, an informal independent expert group (or think tank) could be created to support the ACP trade negotiators with rapid and practical advice. The ACP secretariat could act as the focal point for this.

Acronyms

ACP	Africa, Caribbean, Pacific
CAP	Common Agricultural Policy
EC	European Commission
EU	European Union
FTA	Free Trade Area
GSP	Generalised System of Preferences
LDC	Least-Developed Country
MFN	Most-Favoured Nation
NTB	Non-Tariff Barrier
REPA	Regional Economic Partnership Agreement
SADC	Southern African Development Community
UNCTAD	United Nations Conference on Trade And Development
WTO	World Trade Organisation

Lomé Negotiating Briefs are produced by the European Centre of Development Policy Management (ECDPM), an independent foundation with links to both the ACP and the EU. They are designed to provide information on key issues relating to the current EU-ACP negotiations.

On 19-20 November 1998, the ACP Secretariat, the Friedrich-Ebert Stiftung and ECDPM organised a seminar on ACP-EU trade negotiations. ACP and EU trade experts, as well as representatives of several ACP regional bodies, met with ACP ambassadors at ACP House in Brussels. A previous trade experts' seminar had focused on the EU position and possible alternatives (see Lomé Negotiating Brief 1). This one focused on the ACP negotiating position.

This Brief presents the main conclusions of those two days. It was prepared by Henri-Bernard Solignac Lecomte, with Jean Bossuyt, Geert Laporte, Kathleen Van Hove and Peter Ballantyne. Peter Gakunu, Edwini Kessie and Chris Stevens provided additional comments. Invited experts attended the seminar in their personal capacities and their views did not reflect the formal positions of any party. For further information contact Henri-Bernard Solignac Lecomte (hb.solignac-lecomte@odi.org.uk) or Kathleen Van Hove (kvh@ecdpm.org).

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