Section III

Regional Issues

1. ACP-EU Negotiations of Economic Partnership Agreements

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1. Introduction

The Procedural Guidelines drawn up by the ACP Secretariat clearly propose two stages of negotiations, the first to cover 'cross-cutting' issues and the second to cover trade negotiations per se at the national or regional level.[1] However, the West African members of ECOWAS and Mauritania are currently negotiating a mandate for regional negotiations with the EU. Meanwhile the Eastern and Southern African countries are struggling with a number of complex, overlapping integration issues which need to be resolved before they are in a position to start regional negotiations with the EU.

Other regions have special interests in the postponement of regional negotiations for several years. For example, the Caribbean is engaged in a complicated trade-negotiation juggling act and would benefit from a delay in negotiations with the EU. The Caribbean, as is the Pacific, is faced with the complications of a web of implicit and explicit MFN obligations.

This note stresses the importance of maintaining ACP solidarity in respect of the two stage approach. Solidarity is critical to avoid pre-empting the determination of the geometry of the regional partnership agreements. It also emphasises the timing and sequencing of negotiations and the importance of avoiding precedents which will undermine subsequent negotiations. It first

[1] para 12. The negotiations should therefore be conducted in two phases:

(a) During the first phase, negotiations will take place at an all-ACP level with the EU with a view to concluding an all ACP-EU Agreement, focusing on objectives and principles of EPAs and issues of common interest to all ACP States, whilst allowing ACP States to undertake necessary back-up research and capacity building actions. This first phase could extend from September 2002 through 2003 when a review could take place. The negotiations in the second phase could start in September 2003.
The following list of issues could be discussed under Phase I: principles, objectives, scope and content, special and differential treatment, financing the cost of adjustment, rules of origin, standards, sanitary and phytosanitary measures, customs and administrative co-operation, framework agreement on trade in services, development of the service sectors, fisheries, treatment of trade-related issues such as competition policy, investment promotion and protection, trade and environment, institutional matters (including the Council and the future of Joint Assembly, CDE, CTA), modalities for the phasing of negotiations and the resultant implementation issues, dispute settlement mechanisms, safeguard measures, legal status of the Agreement, support measures to overcome supply constraints, capacity building, treatment of commodity protocols, trade facilitation, evaluation of the impact of CAP reform on agricultural exports, WTO-compatibility, product coverage and transitional periods and arrangements with respect to the establishment of the FTA, investment promotion schemes, including measures to promote the transfer of technology, know-how and skills.

(b) In phase 2, the issues will cover, *inter alia,* tariff negotiations and any other specific sectoral commitments at national or regional level as the case may be and issues of specific interest to ACP countries or regions (***Draft ACP Guidelines for the Negotiations of Economic Partnership Agreements*, Brussels, 21 June 2002).**

briefly considers the particular problems faced by the four regions which appear envisaged at least by the Commission as prime candidates for EPAs.

2. The ECOWAS-Mauritania proposal

ECOWAS is a grouping of 15 West African states, of which all but three are LDCs – Cote d'Ivoire, Ghana and Nigeria – while among the CEMAC members Chad and Equatorial Africa are LDCs. This means that there is an atypically large number of LDCs in this regional group. This is important in that these negotiations could set precedents as regards the future status of the LDCs. Secondly the LDCs already have tariff- and quota-free access to the EU for most commodities – and will have it for all goods but arms – by mid 2009. Thus the ECOWAS countries will likely find it relatively easy to agree the terms of an EPA – at least on the trade side – since access to the EU market is already established for the LDCs and for the non-LDCs by far the most important export good is tariff-free oil. Though the EBA preferences for LDCs are 'concessionary' on the part of the EU, there is every likelihood that they will be maintained over the indefinite horizon.

Reciprocal access for EU exporters to the non-LDC West African markets will be less of a problem than elsewhere owing to the low manufacturing base of the West African countries. For the LDCs the manufacturing base is generally even more restricted and, in any event, they may be granted much longer lead-in times if not exemption from the reciprocity restriction as long as they remain within the UN's list of LDCs. The LDCs could be persuaded to participate in the EPA on the grounds that their exporters will receive assistance as regards technical and regulatory barriers on the EU market and on the basis of the non-trade components of the agreement. In general the ECOWAS countries (plus Mauritania) will be able to negotiate an EPA with fewer painful concessions that other ACP groups. The longest negotiations are likely to revolve around the package of EU development assistance.

The negotiations with the ECOWAS-Mauritania members are also less likely to become mired in the future regimes for 'protocol' commodities – bananas, beef, sugar and rice – since these products are of lesser importance as export goods here than among other ACP regions. True, Congo Brazzaville has a small sugar quota of 10,000 tonnes and there is a banana interest in Cote d'Ivoire, but generally the significance of these commodities is much more limited than for East and Southern Africa or the Caribbean. The latter regions will have to focus much of their bargaining effort on the terms of access for these products on the EU market.

The general risk is that premature negotiations may create a number of powerful precedents. The ECOWAS members plus Mauritania is, in a sense, a special case because trade interests are relatively limited and the development assistance *volet* that much more important. There may be a danger that unfortunate precedents are set over the treatment of LDCs, over the protocol commodities or over other trade issues of critical importance to other regions. Early negotiations could also mean a poorer outcome for the West African states themselves for the reasons set out in section 6 below.

3. Eastern and Southern Africa

Another major concern arising from the possibility of early negotiations with the West Africa countries there could be damaging implications for other regional groups arises from the a premature fixing of the EPA geometry. In particular it would preempt an EPA [at the African Economic Community level – or even] at the ECOWAS-CEMAC-COMESA-SADC level.

The Eastern and Southern African countries are in no position to engage in regional negotiations with the EU in the near future. These countries have embarked on ambitious integration processes – which are now beginning to yield benefits. However the membership of the main regional groupings, COMESA, SADC and the IOC overlap while trading relations are complicated by the fact that four members of SADC, Botswana, Lesotho, Namibia and Swaziland are in a customs union with South Africa – not itself an ACP State – which has already signed a free trade agreement with the EU. Similarly COMESA is pressing ahead with plans for a customs union – initially restricted to a limited number of members – but among these will be Egypt which has also signed a free trade agreement with the EU and is also not an ACP State. These complex regional trading arrangements need a chance to settle, some of the complications need to be resolved and the situation as regards non-ACP States needs to be clarified before negotiations for an Eastern-Southern African EPA – or wider Sub-Saharan [or pan-African EPA] – with the EU are initiated.

4. The Caribbean ACP States

The Caribbean states are at present giving priority to the FTAA negotiations. This is inevitable given that

- the FTAA negotiations are already in progress. Other negotiations within the hemisphere are ongoing and the increasing number of trade agreements being negotiated could leave the Caribbean countries at a disadvantage in their principal markets.
- the FTAA negotiations are extremely demanding in terms of meetings and preparatory work. The resources of the RNM and national negotiators are being stretched to their limits both in terms of personnel and funds;
- the greater part of Caribbean trade is with the Western hemisphere and that share appears to be rising, while the principal competitors to

> Caribbean exports of goods and services are Latin American countries. In a number of sectors the Caribbean is currently losing markets to Mexico and to other FTAA countries.

However the FTAA negotiations are all-or-nothing negotiations, and small countries – and the Caribbean states are particularly small – start from a weak bargaining position. Their markets are often too small to be of great significance to other players. To a large extent they have to depend on the good will and desire for inclusiveness of the United States and Canada. Their only serious, but implicit, counter-threat is that they will become even more worrying as a key element in the illegal drugs trade.

In the Market Access Group the Caribbean will seek to preserve as many of the special preferences of the CBI, including the rules of origin which are less demanding than those of NAFTA which could be the model for the FTAA rules. This could also be a strategy for obtaining special provisions for small economies in terms of market access. All Caribbean and Central American countries are beneficiaries of the CBI except Cuba, so that the current beneficiaries as a group could argue that on the grounds of 'differences in size and level of development of economies' they should have easier rules of origin, longer transition periods, technical assistance and so on. Canada already offers a preferential system to the Caribbean countries under CARIBCAN and might well support such an initiative.

In the end, however, to what extent the Caribbean, and other the Latin American countries, can obtain SDT other than longer adjustment periods is doubtful. But the Caribbean states have another problem. They face the requirement that any trade liberalisation negotiated within the FTAA framework must be extended to the EU under the Cotonou Agreement. Even if they succeed in delaying implementation of market opening under the FTAA to allow a longer period for adjustment – which is clearly in their interest – market opening to EU exports is no longer part of an EPA bargain as far as the Caribbean is concerned. It is already conceded. The only alternative for the Caribbean is to accept the limited US GSP scheme – the CBI is scheduled to end in 2005 – and target an EPA with the EU. But with the great preponderance of their trade being with the US this is not an attractive option.

5. The Pacific ACP States

The Pacific states are faced with a similar predicament to that of the Caribbean. Under the PACER Agreement between Pacific ACP countries and Australia and New Zealand, the ACP states have an MFN obligation to extend to Australia and New Zealand any access preferences which are granted to the EU under the post-Cotonou negotiations. Even if that obligation has not been triggered, negotiations on the opening of Pacific Island markets to Australia and New Zealand are scheduled to start within several years. Under Cotonou, that would of course trigger MFN obligations in opposite direction. To complicate matters further, the Marshall Islands, the Federated States of Micronesia and Palau have MFN commitments to the United States under the Compact of Free Association.

This 'web of MFN obligations' facing the Pacific ACP States does not necessarily imply any particular type of EPA with the EU, except perhaps that that EPA must have a major services trade component. It does imply, however, that all the options as regards the EPA should be kept open as long as possible. It must be borne in mind that a small share of the Pacific Islands trade is with the EU, the bulk being with Australia, New Zealand and Japan.

6. A two stage approach to negotiations

A period of pan ACP-EU negotiations in advance of individual EPA negotiationswould have a number of benefits. These may require more than the year proposed in the ACP Guidelines. That period would provide

- the opportunity is establish common positions and conduct common negotiations on cross-cutting issues. This means subsequent efforts to establish FTAs between ACP regions – for example the construction of the African Economic Community – will be easier;
- individual regions or countries will be negotiating from weaker positions if they seek to negotiate these issues independently. Judging by past EU bilateral trade agreements, the EU will push for *a la carte* agreements including the maximum amount of reciprocity, competition law and open government procurement it deems feasible, using promises of development assistance as the principle carrot. This could both inhibit economic opportunities in the region in question and undermine the bargaining power of other regions;
- time is needed for the ACP States to build capacity both for the negotiations themselves but also to undertake studies of the implications of the various options, both at the regional and national levels;
- a number of ongoing negotiations and changes to trading regimes will help define the possibilities and opportunities that can emerge form regional ACP-EU negotiations. These include negotiations in the WTO to be concluded by 1 January 2005; review of the EU GSP in 2004; ongoing regional integration processes in various ACP regions/ sub-regions which are expected in some cases to result in the establishment of customs unions; and trade negotiations between some ACP countries and third parties (notably the FTAA), and between the EU and third parties. EU enlargement which is expected to take

place in 2004 and reform of the EU's Common Agricultural Policy (CAP) may also change the parameters of the negotiations;

- negotiations within the WTO on the "clarification and improvement" on Article XXIV of GATT 1994 could radically improve the conditions of WTO compatibility for FTAs;
- many ACPs, while accepting the principle of reciprocity, emphasise flexibility in the process of adjustment to new trading arrangements for small economies, through longer transition periods in the liberalisation process, and also through special safeguard clause(s), freedom from antidumping and other contingent protection, easier rules of origin and technical assistance programmes. If principles of SDT for small economies can be established through the WTO or through the FTAA negotiations, the ACP position in negotiations with the EU will be strengthened.

7. Conclusions

The ACP States do not come to the post-Cotonou negotiations unencumbered by regional integration commitments and by a web of MFN obligations – the former strongly encouraged by the European Union and the latter partly imposed by the European Union. In the light of these and other considerations, not least progress in contemporary negotiations in other fora, in particular the WTO and the FTAA, it is critical that regional negotiations not be rushed. There is much to be said for a period of pan ACP-EU negotiations on issues of current interest for at least a year before regionally-based negotiations are launched.

A period of pan ACP-EU negotiations is particularly important as regards the African ACPs. The African ACP Sates are much more dependent on EU trade than are either the Caribbean or Pacific States. Many of them are currently involved in intricate integration processes. The problems of overlapping membership of different regional organisations, the presence of non-ACP states within these organisations and the unanswered question of what is the optimal geometry for a regional EPA with the EU imply that a period of analysis, research and preparation is essential.

It is also important to recognise that precedents can easily be established which can limit the scope of subsequent negotiations. The longer the first stage the more time will be available for the ACP States jointly to establish detailed guidelines for regional negotiators to prevent such precedents. But it is also important to narrow the scope for creating such precedents by negotiating the cross-cutting issues – see footnote 1 for the ACP Secretariat's list of these – at the plenary level. In general to maximise the gains from the negotiations unity and solidarity among all ACP States cannot be stressed too much.