

I

Introduction

EPAs Make Sense Only if They Foster Development: A Broad Overview

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EPAs: Best or worst case scenario?

Imagine two regions: one rich, the other poor. The rich one, which likes to consider itself a free trader, had traditionally kept its market open to imports from the less prosperous region. Yet, the poor region has over several decades generally failed to develop capacity to export products beyond a few primary commodities.

Conscious of the moral imperative to strive for a more equitable world, and hence to foster the development of the poorer region, the rich region decides to make a generous offer. It proposes to negotiate a joint partnership with the poor region to promote its economic development. The principles are simple. Let us stimulate private sector investment by creating a large market among the poor countries. Let this market be open to foreign investment and exports from the rich, so as to benefit the local economy (consumers and industry) in the poor region. By enshrining their domestic trade (-related) policy and regional integration efforts in a formal agreement with the rich region, governments in the poor region would increase the credibility of their reform process. This pro-development approach would be reinforced by removing not only tariffs in goods, but also on trade in services, as well as other technical barriers to trade (TBTs) and behind-the-border restrictive measures. Last, but not least, the institutional and productive-capacity development, domestic policy reforms and adjustment measures needed to accompany the economic liberalisation would be supported by appropriate development assistance from the rich region.

Consider now two other similar blocks, where this time the prosperous region, having granted for decades almost free access to its market to products from the poor region, realises that charity does not pay off: it is costly for the rich while it fails to boost

the economies of the poor. It therefore puts the following deal on the table: either the poor countries lose their preferential market access to the rich region, or they open their own market to capital, goods and services from the rich, under the conditions dictated by the rich regions. Besides, rich entrepreneurs having little to no interest in tiny underdeveloped market in a poor country, the poor countries are summoned to come together and adopt common external and internal economic policies so as to create an effective, large, integrated internal market. To sell their iniquitous programme to the poor, the rich region flexes its muscles while wrapping its arguments in the politically correct language of poverty alleviation and development. Promising development aid that it fails to deliver at any significant level, the rich region revels in a paternalistic approach, claiming to promote the interests that the poor region has been unable to effectively defend.

These two scenarios, of the good North–South partnership and the shrewd cold-hearted free trade agreement, are perhaps just two sides of the same coin. Call the rich region the European Union (EU), and the poor one the group (or any sub-regional grouping) of the African, Caribbean and Pacific (ACP) countries.

The two regions have, since the creation of the European Economic Community in 1957 and the decolonisation process, established a privileged relationship. This has been enshrined in the so-called Yaoundé agreements (1963–1969; and 1969–1975), followed by the four successive Lomé Conventions (1975–2000), under which the EU has granted, on a non-reciprocal basis, a preferential (almost free) market access to ACP imports, accompanied by a substantial development (aid) component. With the signing, in 2000, of the Cotonou Agreement –

the successor to Lomé IV bis Convention – the ACP and the EU agreed to enter negotiations on economic partnership agreements (EPAs), which are envisaged as deep free trade agreements (FTAs) between the EU and ACP regions. The negotiations, which started in September 2002, should lead to the entry into force, by 1 January, 2008, of EPAs between the EU and six ACP regions (Central Africa, East and Southern Africa, Southern Africa, West Africa, the Caribbean and the Pacific).

Depending on whether or not one considers this initiative as conducive to the pro-poor sustainable development of ACP economies, one will characterise EPAs as an example of the best-case scenario, or the worst-case scenario.

The European Commission, and in particular its Directorate General (DG) for Trade, heartedly subscribes to the vision of the EPAs as the best-case scenario. At the other end of the spectrum, some actors have denounced the newly envisaged EPAs as a unilateral initiative by the EU to impose on the ACP a new trade regime ultimately detrimental to their development interests.

In effect, EPAs will have a beneficial effect on ACP countries only if the development dimension is properly integrated into an EPA. Similarly, the impact of EPAs on the regional integration process of ACP countries will depend on the way the EPA process is formulated and implemented. In any case, EPAs will have far-reaching consequences for the regional integration of the ACP countries. They will also set a new paradigm for the relationship between the EU and its former colonies, which will lead to a substantial revision of the framework for development and political relations currently embodied in the Cotonou Agreement.

The purpose of this chapter is to review the principles and process of EPA negotiations, and to discuss the coherence between the EPA process, its development dimension and the regional integration agenda of ACP regions.

The Cotonou Agreement, EPAs and EU perspective

The EPAs, following the framework outlined in the Cotonou Agreement, will be trade agreements

between the EU and the ACP countries ('in a position to do so' – Art. 37.5) based on the principle of reciprocity, progressively removing barriers to trade between them in a way compatible with World Trade Organization (WTO) rules. Under the current multilateral trading regime, this implies that EPAs will be free trade agreements in the sense of GATT Article XXIV on regional trade agreements.

The economic and trade co-operation provisions of the Cotonou Agreement explicitly provide for the coverage of standard market access issues for goods, commodities and services (with specific reference to maritime transport, information and communication technologies and the information society, as well as support to the tourism sector). The Cotonou Agreement also provides for increased co-operation in important trade-related areas, such as competition policy, the protection of intellectual property rights, standardisation and certification, sanitary and phytosanitary measures (SPS), trade and environmental considerations, trade and labour standards, consumer policy and the protection of consumer health, and envisages possible agreements on fisheries and food security.

These Economic Partnership Agreements are thus officially envisaged by all parties as development-oriented free trade agreements (FTAs) between (regional) groups of ACP countries and the EU. Besides trade in goods and agricultural products, they will also cover services, possibly up to an extent that goes beyond the provisions currently negotiated at the multilateral level through the General Agreement on Trade in Services (GATS). For some ACP countries, this is 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. Moreover, a whole range of trade facilitation and trade related matters would be covered under EPAs. Among them, the European Commission would like EPAs to cover issues such as competition policy, investment, sanitary and phytosanitary measures (SPS), standards and certification, protection of intellectual property rights, anti-dumping and anti-subsidy measures, customs procedures, rules of origin, public procurement, trade and environment, trade and labour standards and health and safety regulations

(Articles 45–54). ACP countries, however, have expressed mixed reactions to the heavy agenda on trade-related issues, which they generally would like to see narrowed down to some key issues, subject to their own regional integration agenda.

For the European Commission (EC), and in particular the Trade Directorate General (DG Trade), EPAs will foster development mainly through trade liberalisation and the creation of the right policy framework to attract investment. By creating free trade areas (FTAs) with the EU, the ACP regions will benefit from the standard gains from trade: increased market access to the EU for ACP exports, reduced prices of EU imports for ACP consumers, and associated competitive effects should foster economic growth and hence development. In addition, by building on the ACP regional integration 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.

In the views of the EC, these positive effects 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 effective greater 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 up to an extent that goes beyond the provisions currently negotiated at the multilateral level through the General Agreement on Trade in Services (GATS). For some ACP countries, this is 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.

Third, with their comprehensive coverage, EPAs should contribute to lock in policy reforms in the ACP, increasing the relevance and credibility of the regional integration process of ACP regions, and facilitating their integration in the world economy.

Last, but not least, trade negotiations for the

establishment of EPAs take place in the context of the Cotonou Partnership Agreement, which comprises two other pillars, namely political relations and – of key relevance here – development. EPA negotiations should thus be accompanied by discussions on the development assistance available for the ACP (currently under the European Development Fund – EDF), as well as possible complementary support by other donors. To facilitate this process, Regional Preparatory Task Forces (RPTFs) have been set up, outside but closely linked to the formal EPA negotiations setting. 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.

From Lomé to Cotonou: Shift of paradigm

The decision to negotiate economic partnership agreements, based on the principle of reciprocal market opening, with ACP groupings and not the ACP group as a whole, marks a clear change of paradigm in the ACP–EU partnership, which tends to mark the end of the specificity of the group of ACP countries in their relations with the EU.

Relations under Lomé

European co-operation with the ACP countries dates back to the Treaty of Rome that established the European Economic Community (EEC) in 1957. In the Treaty, the signatories expressed solidarity with the colonies and overseas countries and territories and committed themselves to contribute to their prosperity. The first formal association of ACP and EEC countries took shape through the so-called Yaoundé I (1963–69) and Yaoundé II (1969–75) agreements. At the time, the lion’s share of the resources went to French-speaking Africa, mainly aiming to build infrastructure in the wake of decolonisation.

EEC membership by the United Kingdom in 1973 led to the signing of the wider Lomé Conven-

tion between 46 ACP countries and the then nine EEC member states (1975–80) and the effective creation of the ACP group. The first Lomé Convention was very much a child of its time. It reflected the relative geopolitical power of ACP countries in the context of the Cold War, the oil crisis and the prevailing ideological debate on a 'new international economic order'. Four successive Lomé Conventions (1975, 1979, 1984 and 1989 – over ten years) represented the world's largest financial and political framework for North–South co-operation.

Initially, the Lomé Convention was considered to be a highly innovative model of international co-operation. The aid and trade components of Lomé co-operation provided predictable aid flows over five year periods as well as non-reciprocal trade benefits. As for aid, equal partnership was the cornerstone of the first conventions. It gave ACP countries the responsibility for their own development by entrusting them with a lead role in managing Lomé resources, with the EU¹ playing a supportive role only. In its trade provisions, Lomé I introduced the so-called Stabex scheme to help stabilise export receipts on a wide number of agricultural products such as cocoa, coffee, groundnuts, and tea. Lomé II created a similar mechanism (Sysmin) for countries that were heavily dependent on mineral resources and suffered export losses because of declining world prices. In addition, the EU also agreed on separate trading protocols on sugar, beef and veal, bananas, and rum. The banana protocol, for instance, gave duty-free entry to the EU market for a specific quota of bananas and has been a lifeline for many small Caribbean states that could not compete in the world market. Under the sugar protocol, the EU still buys a fixed quantity of sugar each year from ACP producers at guaranteed prices, higher than world prices.

Despite the continuity of the four Lomé Conventions, which were revised every five years, ACP–EU relations changed over the course of time, especially after 1990. During that decade, European calls for changes in the relationship in all of its three main pillars – political dialogue, co-operation and trade – gradually built up until they cumulated in proposals that set the stage for replacing the Lomé Convention by the Cotonou Agreement.

In the political sphere, the initial principles of

state sovereignty and equal partnership came under more and more pressure as the EU pushed for human rights, democracy and the rule of law to become increasingly part of the dialogue. There were several reasons why this change came about. Since the end of the Cold War, the ACP group diminished in terms of geo-political, security and economic importance to the EU. Also, other international arrangements became more of a priority – such as the eastward enlargement of the Union itself.

Besides the changing political nature of the agreement, the international cooperation pillar also came under increased scrutiny. On paper, the Lomé Convention may have been the finest and most complete framework for North–South co-operation. In practice, however, it evolved into a very complex tool, with too many objectives, instruments and procedures. The result was often reflected in long delays, bureaucratisation, reduced efficiency, and questionable development impact. Though through Lomé the EU had turned into the world's most generous provider of development assistance, its influence and impact as a global player were felt to be far below its potential.

In addition, the Lomé trade regime was increasingly challenged for reasons of both effectiveness and political acceptability. Despite preferential access to EU markets in as much as 99% of all products, ACP export performance had deteriorated over time (its share of the EU market declined from 7% in 1975 to 4.3% in 1980 and 3.1% in 2002). As can be seen in Figures 1, 2 and 3, in all three main ACP regions, export performance was below the world average during the past two decades. In many ACP countries, the structure of domestic economies along with domestic policies constrained effective usage of European trade preferences. Moreover, the most targeted of preferences, those based on tariff quotas for agricultural products at prices based on internal EU prices by their nature retarded economic diversification. As a consequence, diversification away from traditional export products remained very limited: 50% of total ACP exports to the EU are still concentrated in only eight products. Strikingly, non-ACP developing nations that had not enjoyed preferential access have been outperforming the ACP group in exports to the EU.

Figure 1. Evolution of ACP merchandise exports by region since 1980 (1980 = 100)

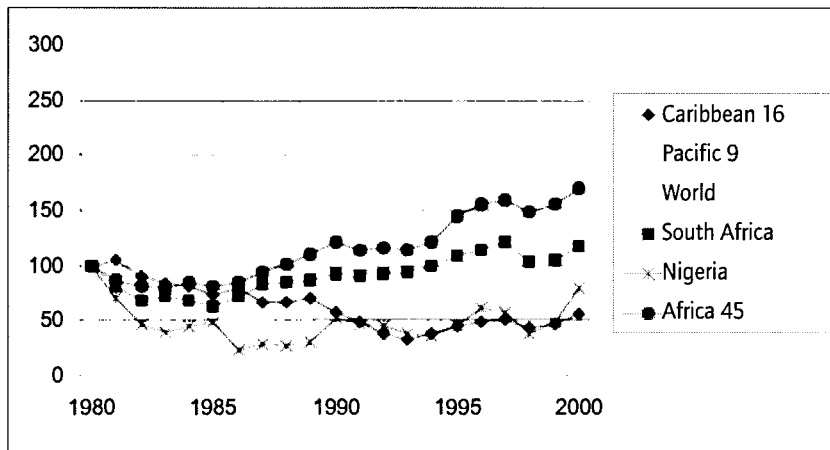


Figure 2. Evolution of merchandise exports: 1950-2000 (1950 = 100)

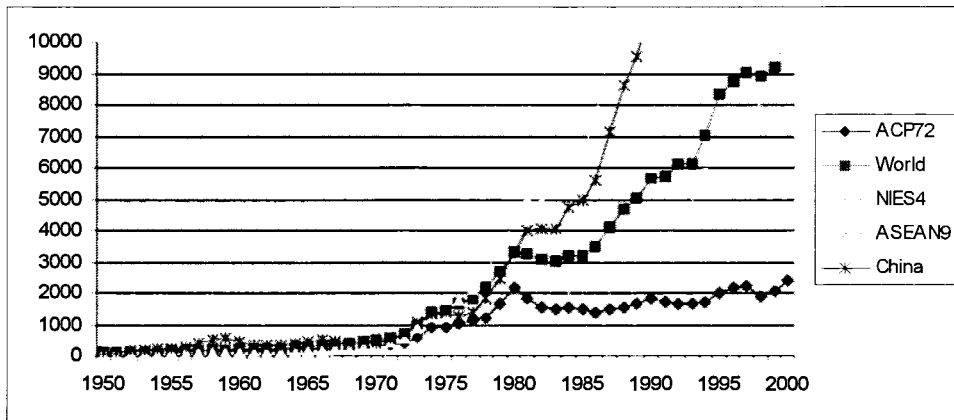
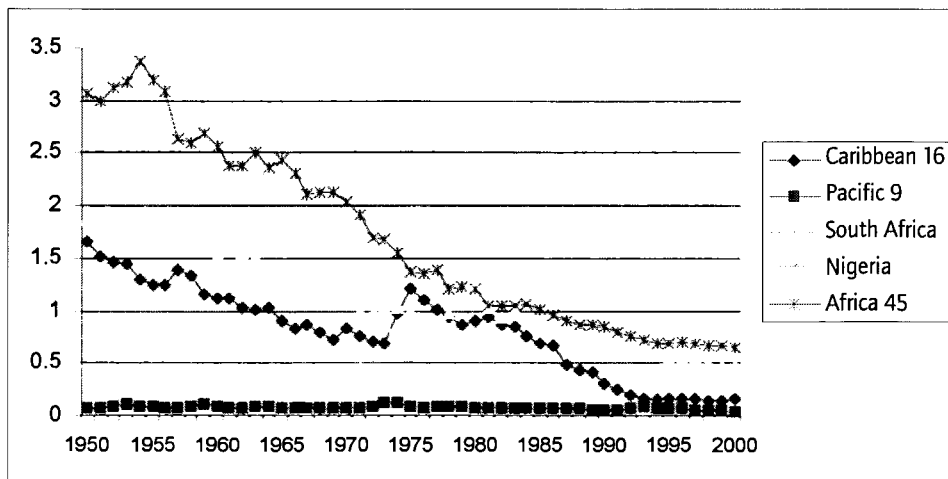


Figure 3. Evolution of share of ACP exports in world total by region: 1950-2000



Source: UNCTAD (2002), *Participation of the African, Caribbean and Pacific Group of States in International Trade*, UNCTAD/DITC/TNCD/Misc.27, www.unctad.org/en/docs/poditctndm27.en.pdf

Another important factor concerned the increasing tension between ACP trade preferences and WTO rules. The problem with the Lomé trade arrangements was not that it offered non-reciprocal trade preferences, but that it discriminated between ACP and non-ACP countries of similar levels of development. Following mounting pressures at the GATT/WTO, the EU finally obtained a waiver from other WTO members for the second period of Lomé IV (1995–2000), thus temporarily exempting the ACP–EU trade regime from challenges by third countries. Yet, as one of the main proponents of the multilateral trading system, the EU argued that future trade arrangements with the ACP would need to comply fully with WTO rules. When the EU sought once again a renewal of the Cotonou waiver at the Doha Ministerial conference in 2001 it was forced to make substantial trade concessions to non-ACP developing countries.

New elements in the Cotonou Agreement

With such a range of pressures on the Lomé partnership, the European Commission took the initiative in 1996 to launch a broad-based consultation process on the future of ACP–EU co-operation. This process led to the so-called ‘Green paper’ (1996) and set the scene for the negotiations of a successor agreement between 1998 and 2000.

From the outset of the negotiating process, it became clear that in these post-Lomé negotiations would not be business as usual. From an EU perspective, the imperatives were: to apply greater aid selectivity and differentiation in the treatment of ACP countries; to link aid and performance; to make the trade regime ‘compatible’ with the requirements of the WTO; to ensure a closer involvement of civil society, the private sector and the economic and social actors; as well as to rationalise Lomé co-operation instruments. During the negotiations, the ACP took mostly defensive positions, aiming to preserve traditional Lomé cornerstones such as sovereignty, autonomy in the management of EU assistance, and non-reciprocal trade preferences.

Yet, when the new Cotonou Partnership Agreement (CPA) was signed in June 2000, it became clear that the new agreement contained elements that strongly departed from the previous Lomé

Conventions. The key changes include:

- a reinforcement of the partnership’s political dimensions;
- the extension of the partnership to new (non-state) actors;
- more rationalised and performance-based aid management; and
- the transformation towards new WTO-compatible trade relations.

Stronger political foundation

The first major innovation in the new agreement is the stronger political foundation given to the ACP–EU partnership (Title II, Part 1). The essential elements underpinning ACP–EU co-operation already existed under the Lomé IV bis Convention. They include respect for *human rights, democratic principles and the rule of law*. A violation of any of the essential elements may provide grounds to suspend EU assistance and trade co-operation with the ACP country concerned (Article 96). Yet, under the Cotonou Agreement, a broad range of political issues that fall outside the range of traditional development co-operation (e.g. peace and security, the arms trade, migration) are also included. It is the intention of both parties that the joint ACP–EU institutions, such as the ACP–EU Councils of Ministers, the ACP–EU Ambassadorial Committee and the ACP–EU Joint Parliamentary Assembly, will play a more effective role in addressing these issues.

The EU had wanted good governance to be included as an ‘essential element’, whose violation could lead to a suspension of EU aid. After lengthy discussions, good governance was accepted as a ‘fundamental element’, meaning that in itself it would not constitute a ground for suspension. However, both sides did agree that serious cases of corruption, including acts of bribery, could trigger a consultation process, possibly leading to a suspension of aid (as a measure of last resort).

Extending the partnership to new actors

A second major new feature relates to the participation of non-state actors and local authorities. A new

chapter on the actors of partnership (Chapter 2 in Title I, Part 1) recognises their complementary role to central governments and defines basic principles for their participation.

ACP governments will continue to be responsible for determining the development strategy for ACP countries. Yet non-state actors (civil society, private sector, trade unions, etc.) and local authorities will be involved in consultations and planning of national development strategies, provided with access to financial resources, and involved in the implementation of programmes. They will also receive capacity-building support.

Among the new actors, most attention is given to the private sector. Its role as engine for development is explicitly recognised. A comprehensive programme of action to support the private sector at different levels is outlined. For the first time the private sector will have access to funding via the European Investment Bank (EIB) without requiring a state guarantee. A new Investment Facility aims to stimulate regional and international investment, while strengthening the capacity of local financial institutions

Programming of EU assistance

A third innovative element is related to performance-based aid management, the simplification of instruments and rolling programming (Part 4).

The CPA marks the end of the 'aid entitlements' (i.e. fixed allocations regardless of performance). Instead, the EU can use the resources for the ACP in a more selective and flexible way. Aid allocations will be based on an assessment of each country's needs and performance with the possibility to regularly adjust financial resources in light of this assessment, through a system of rolling programming. In practice, it means that more money can be channelled to 'good performers' and that the share of 'bad performers' can be reduced.

All this means that programming of aid resources becomes a strategic management tool, aimed at ensuring that the EU support to a given country or region is deployed in a much more effective and coherent manner. However what remains uncertain is the extent to which development assistance will as a result be channelled to those more-developed

countries in the ACP rather than towards the LDCs which are in greatest need.

Trade under Cotonou

Though the changes affecting ACP–EU political dialogue, participation of new actors, and aid management are all important deviations from Lomé, the most radical innovation concerns the area of trade. Whereas for the last 25 years, the Lomé Convention granted non-reciprocal market access to the ACP, the CPA foresees the establishment of several reciprocal trade and economic co-operation agreements between the EU and different groups of ACP countries.

Trade provisions in the Cotonou Agreement

Part 3 of the Cotonou Agreement, Title II – covering Economic and Trade Cooperation – sets the path for replacing the current non-reciprocal preferential market access for the ACP group with new, WTO-compatible trading arrangements. These arrangements are scheduled to enter into force by 2008 at the latest. During the transitional period up to 2008, the time in which negotiations for the new arrangements are to take place, Lomé trade preferences have been temporarily extended.²

The option for new trade arrangements that is described most in detail in the CPA is that of Economic Partnership Agreements (EPAs). The concept of EPAs comes down to WTO-compatible and reciprocal free trade agreements (FTAs) between the EU and (preferably) sets of ACP regional groupings. EPAs would aim to go beyond 'traditional' free trade agreements, which only cover trade in merchandise goods. Instead, EPAs would include trade in agriculture and fishery products, trade in services, as well as rules on investment. In addition, co-operation is foreseen in a number of trade-related (regulatory) areas such as competition, intellectual property rights, standardisation and certification, sanitary and phytosanitary measures (SPS), trade and the environment, trade and labour standards, consumer policy, and food security.

However, EPAs are not the only possibility for new trading arrangements with the EU. ACP countries belonging to the group of least-developed

countries (LDCs) can opt for the 'Everything But Arms' (EBA) initiative, which provides duty- and quota-free access to all LDCs. For non-LDC ACP countries that want to opt out of EPA negotiations with the EU, alternative arrangements are to be examined in 2004 (Article 37.6).

Five principles as a framework

Both the general scope and the content of EPAs are well-described in the Cotonou Agreement. EPAs are not foreseen to be just ordinary FTAs. Rather, they are to be FTAs *plus*, having a clear development dimension. In that respect, **sustainable development and poverty reduction** can be seen as the overarching principles that should guide the formation of EPAs (Article 34). The remaining four principles are to serve as a framework for the current negotiations: regionalism, reciprocity, differentiation and WTO-compatibility.

Reciprocity. The most important element of an EPA is the establishment of a (bi-regional) FTA, which will progressively abolish substantially all trade restrictions between the EU and the ACP countries concerned (Article 37.7). This is a radically new element in ACP–EU trade relations. For the first time, ACP countries will have to open up, on a reciprocal basis, their own markets to EU products in order to retain their preferential access to the EU market. In addition, ACP regions that negotiate EPAs will have to enhance their own integration in order to jointly negotiate an EPA. Thus except for trade liberalisation *vis-à-vis* the EU, ACP countries would need to open their markets towards their regional partners. The rationale for reciprocity rests on the principle that liberalisation of ACP (regional) markets will create larger markets and increase competition within ACP economies, stimulating (EU) investment and the necessary economic adjustments processes, leading to growth and development.

Regionalism. As mentioned, the CPA clearly envisages negotiations with ACP regional groupings that will be in a position to negotiate EPAs. Though the EU has not ruled out the possibility of concluding agreements with single countries, this is only likely to happen in exceptional cases, and when such an agreement does not fracture the regional integration

process of the country concerned. The principle of basing the future trade co-operation on regional integration initiatives stems from the conviction that regional integration is a key stepping stone towards further integration into the world economy, as well as a main instrument to stimulate investment and to lock in the necessary trade and economic reforms (Article 35.2).

Differentiation. Considerable weight in the CPA is given to differentiation and special treatment, which affirms the North–South character of the relationship. The agreement states that EPAs will take into account the different levels of development of the contracting parties (Article 35.3). Hence, EPAs should provide sufficient scope for flexibility, special and differential treatment, and asymmetry. In practice, this could mean that certain ACP countries will be allowed longer transitional periods before their markets are fully liberalised or that certain sectors are entirely excluded from liberalisation. In particular LDCs, small and vulnerable economies, landlocked countries and small islands, for which special provisions have been included in the CPA (Part 5), should be able to benefit from differential treatment in EPAs.

WTO compatibility. Underlined by various articles in the CPA, EPAs should be compatible with WTO rules. WTO compatibility is pursued to prevent the new arrangements from being challenged by other WTO members. Yet, there exists considerable scope for tension between this principle and the aforementioned principles of regionalism and differentiation. As some of the relevant multilateral rules concerning FTAs and special and differential treatment are currently being renegotiated in the Doha Round, it remains uncertain how much flexibility is available for the EPAs that are currently being concluded.³

Alternatives to EPAs⁴

The Cotonou Agreement does not contain provisions that bind the EU or the ACP countries to conclude EPAs. On the contrary, it is stated that in 2004, the Commission will review the state of affairs and propose alternatives for those countries that 'decide that they are not in a position to enter

into economic partnership agreements' (Article 37.6). Though the scope and content of these alternatives are currently uncertain, the most commonly referred to alternative to EPAs is the EU Generalised System of Preferences (GSP), in one form or another. The current EU trade system entails FTAs, the Cotonou Agreement, the GSP, and its specific 'Everything But Arms' (EBA) provisions for least-developed countries (LDCs), and MFN (most-favoured nation) duties. With the end of the Cotonou regime of preferences, the existing available options of preference for the ACP are therefore an FTA/EPA or the GSP/EBA.

GSP (+)

Taking into account the difficulties entailed in seeking a reform of GATT article XXIV and the possible opposition of certain WTO members, many EU officials, consider the EU GSP the only real alternative to EPAs. The reflections on this option tend, however, to focus on the weaknesses of the current GSP, its recent evolutions and the possibility of reforming it further to make it more suitable to (non-LDC) ACP countries' needs.

The EU considers the GSP to be an inferior alternative to an EPA, a clear 'second best', since it is unilateral in nature covering only market access without any developmental dimension. Additional common critiques to the existing GSP include:

1. The GSP market access conditions (tariff preferences, thresholds triggering the imposition of safeguard measures, rules of origin) are less advantageous than those in the Cotonou framework. Moving from the Cotonou *acquis* to the GSP would contradict the Cotonou Agreement provision 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'.⁵
2. Since it is not a contractual arrangement the GSP lacks predictability and therefore does not provide any incentive for investors.
3. 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.

4. All developing countries are entitled to the GSP preferences, and this further reduces the market access attractiveness of the GSP for the ACP.
5. Given that GSP schemes obey to the WTO Enabling Clause principles, 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.

The recent legal history of the EU GSP has partly confirmed this last 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. The Government of India challenged in 2002 the special 'extra' preferences provided under the EU GSP to a select group of developing states on the grounds that the EU was supporting them in the fight against narcotics trade. Final judgement on the Indian complaint was reached in 2004 by the WTO Appellate Body, who found that the EU GSP was illegal, though 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 has 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 environment and governance principles (ratification and implementation of several UN/ILO Conventions).

The critiques outlined above on the scarce attractiveness of the EU GSP 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 and therefore not contractual has been the object of debate for long and already the former WTO Director General Ruggiero suggested that the EU could autonomously make the GSP contractual, by binding its concessions in the WTO. More recently, in the context of the reform of the ACP–EU relations, the debate has included the possibility of creating an ‘enhanced GSP’ with Cotonou-equivalent preferences to make it also attractive for the ACP countries. Extending the GSP+ to incorporate all ACP exports and improve its market access preferences to the Cotonou level where they are inferior would constitute a WTO-compatible alternative to an EPA with a definite appeal for non-LDC ACP countries as well.

Stevens and Kennan (see Chapter 9) 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 in the Cotonou framework under the ‘enhanced GSP’ scenario would relate to the products that benefit from the commodity protocols: sugar, bananas and rum. Within the ACP, however, serious difficulties with these products will be faced regardless of the future ACP–EU regime, so one could question to what extent such erosion should be considered a negative aspect of the ‘enhanced GSP’.

The Everything But Arms (EBA) initiative

Those ACP countries that belong to the group of LDCs can opt out of EPAs in favour of the EBA initiative. This preferential scheme has been operational since March 2001 and benefits all 49 LDCs around the world.⁶ EBA has provided full duty-free and quota-free access for all LDC exports – except

arms – and does not include any reciprocal conditions to be met by LDCs.⁷

Since out of 76 ACP countries, 39 are LDCs, more than half of the ACP group would qualify for EBA access should they not want to negotiate EPAs. Yet, the trade-off is not simple. The EBA initiative provides duty and quota-free access for all LDC products and hence seems by definition as good as any future EPA might be. Why under these conditions would ACP LDCs need to open up their market on a reciprocal basis to EU products? EBAs do not address technical barriers to trade and other trade-related issues (unlike the foreseen EPAs), and operates under stricter rules of origin than currently prevailing under Cotonou (and future EPAs). Besides, EBA access does not yield the same export revenues in those products currently covered by the Commodity Protocols (banana, beef and sugar). The prices received under the sugar and beef protocols from which some ACP countries benefit are the same as the prices received by domestic (subsidised) EU producers and hence much more favourable than world market prices. Thus, when an LDC ACP country currently profits from those protocols, it needs to weigh these benefits against the ‘flat’ access offered through EBA. The question remains as to the future of the Protocols, as well as their incorporation or not into EPAs.

In addition, as with GSP, EBA is a unilateral initiative which arguably could be reversed by the EU at some point in the future, although this scenario does not seem likely. Further uncertainty is added by the fact that EBA is confined to LDCs only: a country graduating from this status will lose EBA preferences and be left with more unfavourable GSP status. Another less favourable provision of EBA is its safeguard clause that allows the EU to withdraw preferences whenever LDC exports rise above ‘usual’ levels. The exact interpretation, and thereby its adverse effects to LDCs’ exports, is unclear and thus enhances uncertainty.

It remains therefore for each ACP LDC to assess whether the current EBA regime is a superior alternative to the proposed EPAs.

However, the regional dimension of EPA introduces a new bias in the determination of ACP LDCs. Indeed, even if the advantages of EBA were

to outweigh those of an EPA, an ACP LDC would endanger the regional integration process, or exclude itself from its regional partners, by opting out from an EPA. This is the case since all LDC ACP countries are involved in some sort of regional arrangements with non-LDC ACP countries: opting for EBA could fracture these arrangements and possibly isolate the LDCs from their regional partners. Although participation in EPAs by LDCs is strongly advocated, the EU has provided little evidence that reciprocity will provide sufficient benefits to LDCs to justify the considerable short term adjustment cost.

EPAs: A regional focus

A common characteristic of all six regional EPA negotiations is that they have, in their initial stage, focused on the regional integration process of each EPA region. Indeed, the European Commission has undertaken to review, with its ACP regional partners, the state of regional integration in all six ACP regions and their future agenda. Arguably, this approach comes from the need for EPAs to build upon and reinforce the regional integration process of ACP regions. But it can also be traced back in a broader favourable approach towards regionalism adopted by the European Union.⁸

The regional dimension of EPAs

The ACP countries enjoy a special privileged relationship with the EU in the context of the EU partnership agreement with the ACP countries (under successive Lomé Conventions and since 2000 the Cotonou Agreement). This partnership is due to be enhanced with the current negotiations of EPAs, leading to enhanced economic integration among the EU and the ACP regional groupings.

A basic principle of EPAs contained in the Cotonou Agreement is that they should build on and reinforce the regional integration process of the ACP. Article 37.5, mentioned above, states that the negotiations of EPAs shall 'tak[e] into account regional integration processes within the ACP'. The regional integration process is a recurrent theme in the Cotonou Agreement and appears in numerous articles.⁹ According to the European Commission, by building on larger well-integrated regional

markets, regional EPAs should contribute to foster the integration of the ACP in the world economy, provide for economies of scale, stimulate investment and contribute to lock in the necessary trade reforms.

It is on this ground that the EC considered negotiating with existing ACP regional groupings. This conception was presented in its 1996 Green Paper, which developed the notion of the then Regional Economic Partnership Agreements (REPA), the equivalent of today's EPAs. The emphasis on regions is based on the Commission's view that regional integration is a stepping stone toward further trade liberalisation and thus integration into the world economy.

The principle advocated by the European Commission is that economic integration at the regional level with the EU should reinforce the respective integration process of regional groupings. It should enhance the benefits from regional integration among developing countries, in the form of enhanced trade and investment flows for instance, from Europe and within the developing regions. This will provide stronger incentives to the members of regional groupings to commit to the objectives of the region (and not opt out from a grouping that is tied to the EU). This regional partnership with the EU should therefore help to increase the credibility of regional integration processes, in particular in Africa.

In this respect, the EU is also perceived as an 'external guarantor' to avoid economic and integration policy reversal and create a lock-in effect through cooperation with the EU and possible bi-regional agreement.

The EPAs will also benefit from deeper integration within the regions, so that better integrated regions can conclude more comprehensive agreements with the EU, which, in the views of the European Commission, can only be beneficial to them. The more the better! Stronger regional groupings will in turn be able to provide stronger support to the African Union (AU) process. Moreover, the different regional EPAs should be based on a similar framework. So, while the European Commission envisages differentiated specific provisions for each EPA, their general structure should be common.

Ultimately, as explicitly indicated in the Commission negotiating mandate from the EU member states, EPAs could over time be merged among regions in Africa to become larger entities. Hence, a common EPA for all African ACP countries could be envisaged in the long run. This would then be compatible, and perhaps in fact reinforce, the integration process of the African Union (AU). Or so goes the global vision of the European Commission.

In a document produced prior to the opening of the EPA negotiations, the Commission also stressed that negotiations on EPAs with ACP groupings should rely on and further enhance 'functioning' and 'effective' regional integration processes among ACP countries.¹⁰ In view of the poor record of some ACP regional groupings, the Commission was obviously concerned to enter into negotiations on EPAs with groupings whose existence is more than purely formal, and which pursue or have achieved substantial economic integration in practice. However, the determination of criteria to distinguish between an 'effective' and an 'ineffective' regional integration initiative is likely to prove controversial. In fact, one may wonder whether some of the regions self-determined for an EPA, such as CEMAC, the PACP, or the ill-defined SADC-EPA configuration (which excludes key members of SADC) do constitute effective regional groupings with functioning regional integration mechanisms.

The European Commission can also be quite prescriptive in what it considers key elements for effective integration. For instance, the European Commission outlined a 'toolbox' for EPAs which highlights key elements for successful regional integration, to be considered by the ACP, but which also reflects the broader thrust of the European Commission on what credible regional integration processes should entail. It identifies five components.¹¹ The first two relate to trade in goods (boiling down to the creation of a customs union) and trade in services (with the liberalisation of the four modes of supplies and the development of a simplified and harmonised regulatory system). A third category covers trade (related) rules that affect effective regional integration. These include SPS and technical regulations that need to be harmonised at regional level through the setting up of regional

bodies. A regional authority must be created to enforce competition and subsidy rules. Similarly, regional policies must be established on intellectual property rights, investment, public procurement, environmental, labour and consumer rules. To ensure appropriate and credible implementation of regional policies, enforcement mechanisms must also be put in place (e.g. regional appeal courts, regional binding arbitration, etc.). Finally, regional groupings may consider fiscal and macro-economic harmonisation, creation of monetary union, and the development of appropriate regional bodies 'to be the motor of integration'.

Overlapping membership or the 'spaghetti bowl' nightmare

Many ACP countries belong to more than one regional grouping, some of which have overlapping membership and in some cases conflicting objectives and obligations. This is the case for instance in East and Southern Africa with COMESA/SADC/EAC whose integration processes and agenda are still not consistent.

For instance, most SADC members belong to at least one other regional grouping. This is perfectly consistent with the principles of a free trade agreement, where each member remains in charge of its own trade policy towards non-members. A country can thus belong to several different free trade agreements, as is often the case. However, in the case of customs unions, where members adopt a common external tariff/policy, a lack of coherence leads to conflicting obligations. SADC includes a subgroup of countries, South Africa and the BLNS (Botswana, Lesotho, Namibia and Swaziland) countries, which have formed the Southern African Customs Union (SACU). A possible SADC customs union (proposed by 2010) will thus require the alignment of a SACU and SADC common external tariff. To complicate matters further, several SADC members also belong to the Common Market of Eastern and Southern Africa (COMESA), which is set to become a customs union in the very near future.¹² In addition Tanzania, besides its SADC membership, is also part of the East African Co-operation (EAC), which became a customs union in

2004, but not of COMESA, unlike its two other union partners, Kenya and Uganda. This leads to unavoidable conflicting economic integration commitments and objectives.

South Africa, which was only a qualified member¹³ of the ACP, already concluded a free trade agreement with the EU in 2000 (the TDCA) and will not therefore be part of the EPA negotiations. SADC membership often overlaps with other regional arrangements, which have different (and sometimes conflicting) integration and trade programmes, and whose members are also expected to negotiate EPAs with the EU. Currently, Angola, Botswana, Lesotho, Namibia, Mozambique, Swaziland and Tanzania have chosen to negotiate EPAs under the SADC banner, the SADC-EPA group. South Africa will participate as an observer. Other SADC Members will negotiate EPAs under the banner of other regional arrangements, notably the East and Southern Africa (ESA) EPA configuration, which regroups COMESA countries. Tanzania is a case in point, as its two other EAC partners, which unlike Tanzania are members of COMESA, have joined the ESA-EPA, while Tanzania negotiates an EPA under the SADC (minus) configuration.

Unless the SADC-EPA and COMESA-EPA end up being identical agreements, which can be merged into one broad SADC-ESA EPA, the regional integration processes in the region could be seriously compromised. Similarly, BLNS countries are *de facto* part of the TDCA, since they belong to SACU, a customs union with South Africa. How can then BLNS countries negotiate a separate EPA with Angola, Mozambique and Tanzania under the SADC banner? Again, this is doomed to split the region or lead to conflicting obligations.

EPA negotiations force countries to choose one region over another, in the case of multiple memberships. While this may arguably be a desirable outcome, the danger is that considerations about the relationship with the EU take precedence over regional concerns. That is, external considerations driven by the EU may prevail over domestic (national and regional) concerns. The issue is whether the regional integration process can be driven, or supported, by foreign forces (in this case the EU), or whether the process, to be sustainable,

should not be endogenous. This is a question that ultimately can only be resolved by the ACP countries themselves.

Asymmetry of integration, development or interest within a region

Alternatively, EPA negotiations with the Caribbean have been undertaken with CARIFORUM, that includes CARICOM (which moves towards an effective customs union and the completion of its single market) and the Dominican Republic, in a free trade area. The EPA agenda, which has ambitions according to the EC to address 'behind-the-border' policy matters, suggests deep integration, more in line with the CARICOM agenda of integration than the shallower CARIFORM FTA. By pushing for a more substantive regional integration agenda to fit the EPA process, the European Commission creates tensions in the CARIFORUM region, which might undermine, rather than promote, regionalism in the Caribbean.

The level of integration of a region plays, therefore, a key role in the pursuit of an EPA. Varying degrees of integration within a region may create tensions among regional partners, which may ultimately undermine the claimed objective of EPAs to build upon and strengthen regional integration. Such fears have been raised in the context of West Africa, with UEMOA experiencing a deeper form of integration than the encompassing ECOWAS. The current process of convergence between the UEMOA and ECOWAS regional integration processes would appear to remedy such possible tensions. Yet, a failure to comply in time the implementation of an ECOWAS common external tariff could endanger the EPA negotiations process, and result in a split region. This led some West African officials to complain that the European Commission, by pushing for a comprehensive EPA agenda, was forcing the speed of integration of the region in an excessive way.

Another potential source of tension within a region due to EPA is the presence of least-developed countries (LDCs), whose interests are likely to differ substantially from those of other developing ACP countries. Reciprocity is the cornerstone of the

Commission's approach to the negotiations of EPAs. However, this raises questions about its consistency with the implications of the 'Everything but Arms' (EBA) initiative, where the EU grants non-reciprocal market access to all LDCs. At issue are the ACP LDCs non-reciprocal trade preferences with the EU under an EBA, which they would have to forfeit by entering into an EPA. This of course raises the question of whether ACP LDCs (40 out of the 77 ACP countries) have any serious incentive to join an EPA. The Commission's informal argument appears to be that EPAs will encompass much more than standard market access measures, and will include trade-related measures as well. Yet, the superiority of an EPA over EBA, in terms of the benefits for ACP countries, has yet to be formally demonstrated.

More crucial for regional integration, is what would happen should an ACP LDC decide not to sign an EPA and retain instead its EBA non-reciprocal market access to the EU? Clearly, this would seriously undermine the regional integration process. Indeed, either the LDC is excluded from the region and the regional EPA is signed, or the LDC remains a member of the regional grouping and EPAs are concluded with the other individual members of the region. In the latter case, EPAs will force the region to maintain border controls, so as to determine the origin of the products traded with the EU, not to mention the possible consequences on trade-related issues that would not cover the whole region.

Note that the same problem would arise should any member of a regional grouping (LDC or not) decide to opt out alone from an EPA. In such an event, an EPA could lead to the disintegration (rather than integration) of a region. For the sake of illustration, what would happen to ECOWAS were Nigeria unwilling to sign a common regional EPA with the EU? Would the integration process of ECOWAS, due to become a customs union, be reinforced? This is a hypothetical example that could be repeated with most countries in the various African regions. The point is that unless all countries of a region can agree on a common EPA, the partnership with the EU may seriously disrupt the regional integration process. How, in these conditions, would the regional economic communities (RECs) be able to

be the building blocks to the African Union integration process?

In the Pacific regional integration is perhaps the most shallow and immature of any ACP region. While the Melanesian states have pursued very haphazard trade integration dating back to the mid-1990s, it is only in the last few years that all Pacific ACP states signed their first trade integration agreement, the Pacific Islands Countries Trade Agreement (PICTA). Ratification and implementation of PICTA has been extremely slow. The EU's need to complete negotiations in this most remote and vulnerable of regions may compound existing sub-regional tensions between the Melanesian states group and the Pacific ACP group as whole.

Each ACP regional grouping is also put in the difficult position of having to speak with one voice during the negotiations with the EU. While this is to be expected from a customs union with a common external policy, it is unusual for a free trade area where member countries retain full sovereignty in the determination of the external trade policy. A common position by an FTA requires therefore a strong, well-developed co-ordination process among the member countries. In any case, any regional agreement involving an FTA as one of the partners will have to be notified individually to the WTO by each member of the FTA.

Political will may be insufficient. Conflicting interests may generate tensions within the region. Even in the presence of explicit commitment to negotiate as a group, weak institutional capacity may prevent many groupings from effectively defending the interests of their members during the negotiations with the EU.

Other criticisms of the EC's EPAs

The European Commission's approach to EPAs has raised many criticisms. From an economic point of view, it has been noted that the European Commission tends to ignore the potentially negative effects of regional integration agreements, in particular among developing countries, and of EPAs based on reciprocal regional free trade agreements. ACP regional groupings, particularly in Africa, are characterised by large differences in the size of their

economies and levels of development, as well as in the structure of their tariff rates. As a result, preferential trade liberalisation is likely to generate significant trade diversion and transfers of resources, through the loss of revenues from import duties, in favour of the dominant country in the regional grouping which is often more industrialised and imposes higher tariffs on industrial goods. Regional integration among poor countries with different sizes and levels of development could lead to income divergences among the partners.

For the ACP countries, preferential liberalisation of imports from the EU could lead to severe loss of fiscal revenues resulting from the abolition of customs duties and may require significant adjustments to domestic production because of competition from EU products. These elements could destabilise the ACP regional integration process that the EU seeks to reinforce.

Negotiating EPAs may not only result in trade diversion, but also divert the attention of ACP countries away from other regions and multilateral considerations. The danger of 'EPA-centrism' is reinforced by the limited negotiating capacity of ACP countries and regions. This is likely to be overstretched during the EPA negotiations, and may not allow ACP countries to devote enough effort to the WTO negotiations.¹⁴

Many observers note that the Commission's approach may also lead to a split in the ACP group. The EBA initiative has already divided the group into two distinct categories, the LDCs (which benefit from the EBA) and non-LDCs. The clear and present danger is therefore that the ACP group will lose its coherence and may end up divided into regional entities. The negotiation of separate EPAs with each regional ACP grouping will most certainly further divide the ACP group. By negotiating with a subset of ACP countries, the EU could reinforce its bargaining position *vis-à-vis* the ACP countries. For the EU it is indeed easier to negotiate with a smaller partner or group of partners.

The EPA negotiations process: Key features

EPA negotiations: A two-phase process

The EPA negotiations were officially launched on 27 September, 2002. These new trade agreements,

which should enter into force by January, 2008, should build upon ACP regional integration initiatives and aim to facilitate the gradual integration of the ACP countries into the world economy. If concluded, the EPAs will have a profound impact on the ACP economies and fundamentally change the relationship between the world's largest single market and some of the poorest and most vulnerable regions in the world.

The EPA negotiations have been structured around two phases, which somewhat overlap. The first phase of the negotiations, which started on 27 September, 2002, has taken place between the European Commission (EC) and the ACP group as a whole. The objectives were to define the format, structure and principles for the negotiations.

The second phase of regional negotiations started in October 2003, between the EU and the six self-determined ACP negotiating groupings:

- CEMAC-plus (i.e. the Communauté Economique et Monétaire de l'Afrique Centrale, plus Sao Tomé and since December 2005 the Democratic Republic of Congo), since 3 October 2003.
- ECOWAS-plus (Economic Community of West African States, plus Mauritania), since 6 October, 2003.
- ESA (Eastern and Southern Africa) since 7 February, 2004.
- CARIFORUM (Caribbean Forum of ACP states) since 16 April, 2004.
- SADC-minus: (Southern African Development Community countries not already part of another EPA grouping, i.e. the BLNS countries plus Angola, Mozambique and Tanzania), since 8 July 2000.
- PACP states (Pacific ACP states) since 10 September, 2004.

The joint declaration¹⁵ and report¹⁶ on the progress of the all-ACP level discussions adopted at the ACP-EU Ministerial Negotiating meeting on 2 October 2003 were the result of compromise solutions worked out at the highest political levels. This started with the ACP Council of Ministers agreeing

on the follow-up mechanisms for linkages between the all-ACP Phase I and the regional Phase II of the negotiations, and followed with the ACP Ministerial Chairman and then EU Trade Commissioner Pascal Lamy agreeing on the form, wording and status of the document and further mechanisms that would relate the progress in Phase I to negotiations in Phase II. The ACP had sought to have a legally binding agreement on the issues agreed in Phase I to provide guidelines for Phase II regional negotiations. The European Commission had maintained all along that the objective of all-ACP level discussions was clarification of issues and that the Cotonou Agreement served as a sufficient legal basis for negotiations. By way of compromise, it was finally agreed that the joint report would 'serve as a point of reference, and provide guidance, for the negotiations to be conducted at regional level'.

On the substance of what had been agreed to date, the joint declaration stressed the 'satisfactory' results of Phase I 'with regard to the high degree of convergence reached'. A detailed examination of the report, however, reveals that convergence was reached mainly in reaffirming existing principles and objectives, and not in areas of substance in addition to the existing commitments of the Cotonou Agreement. Even where there is convergence, differences in interpretation often remain. For instance, the ACP and the EU agree that access to the EU market should be maintained and improved under EPAs. However, in the context of increasing trade liberalisation and diminishing preferential treatment, improved market access can only stem from more favourable rules of origin and comprehensive treatment of non-tariff barriers. The EU's commitment to tackling issues of this nature remains unclear.

In the end, both sides agreed that the discussions on remaining divergences on issues of all-ACP interest could continue at that level in parallel with regional level negotiations. Three follow-up mechanisms were agreed:

The Joint ACP-EC Ministerial Trade Committee (JMTC) will be responsible for ensuring mutual understanding on horizontal issues of all-ACP interest in discussions at that level and should make recommendations to ensure coherence of the nego-

tiations. ACP ministers and DG Trade will meet as appropriate to take stock of the discussions.

An ACP follow-up mechanism for the regional Phase II of the negotiations. The mandate of this body is to ensure circulation of information among the regions and coherence in the various negotiating processes and to give non-binding advice on issues or approaches in the negotiations should there be a need for this. It will comprise the chief technical negotiator for each region; a representative from each of the six ACP regions; a representative of the regional organisations; the Secretary-General of the ACP group; the *Troika* of the Committee of Ambassadors; and a representative of the High-Level Group of Experts. At the political level, the ACP Council of Ministers, with due regard to the Committee of Ambassadors' report and possible recommendations from the Ministerial Trade Committee, will review the state of advancement of the negotiations to ensure coherence between the various processes.

An all-ACP-EC Technical Monitoring Committee. The main purpose of this mechanism will be to ensure a free flow of information and to promote dialogue between the different ACP regional groupings, on the one hand, and between them and the European Commission (EC), on the other. The committee will be composed of representatives of the ACP follow-up mechanism and EC officials.

On the whole, the first phase of the all-ACP negotiations can be seen as a failure for the ACP and somewhat of a victory for the EU. Indeed, the ACP group claimed to keep its cohesion, and defend common interests throughout these negotiations. Yet, they reached no substantive agreement with the EU after one year of 'negotiations', that were in fact closer to discussions of clarification. The ambitions of a grand ACP unity was further dented by the eagerness of some regions (notably Central and West Africa) to start negotiations with the EU at the regional level, as soon as possible. It is worth noting that they (like other ACP regions) were encouraged to do so by the European Commission. The then-Trade Commissioner Pascal Lamy had even publicly invited ACP regional organisations to start informal discussion on EPAs during the course

of this first all-ACP phase of negotiations, thereby undermining attempts to form a common ACP front.

Recent developments in the EPA negotiations process

After the official launching of all six regional negotiations in 2003–04, initial negotiations and discussions have slowly started on the determination of the policies, instruments and capacity building support necessary for EPAs. In particular, the Phase II regional negotiations have centred on the regional integration process (stocktaking exercise: level of integration, objectives, support) in each of the six EPA groupings, the general framework of an EPA, and discussions on issues such as technical barriers to trade and SPS measures. In parallel, support measures have been discussed in Regional Preparatory Task Forces (RPTFs), whose objectives are to bring together trade and development ACP regional and European Commission officials, together with other donors when appropriate, to identify existing mechanisms/funds and complementary strategy to support/finance accompanying measures for EPAs.

2006 is a decisive year in the effort to reshape ACP–EU trade relations. All EPA negotiating regions have started the substantive negotiations (Phase III), which focus on the specific structure and scope of each EPA, the approach to trade liberalisation, as well as the drafting of legal provisions. In addition, ‘a formal and comprehensive review’ of EPA negotiations is being carried out in the second half of 2006 for all EPA negotiating regions, as foreseen by Article 37(4) of the Cotonou Agreement.¹⁷ A monitoring mechanism of EPAs has also been discussed and initially set up by the European Commission with the ACP at a technical level, but several proposals have been suggested to initiate a more ambitious process. While many ACP stakeholders have expressed concerns about EPAs, in particular related to their development dimension, the European Council pledged to ‘closely monitor EPAs so that they help achieve development objectives’.¹⁸

On the development assistance side, 2006 is also a decisive year, with the allocation and program-

ming of the 10th European Development Fund (EDF), which will play a central role in supporting the initial implementation of EPAs (that is from 2008 to 2013).

With severe capacity constraints,¹⁹ what concrete proposals for an EPA will the ACP be able put on the negotiating table? Will they be based on well-defined national development objectives, a real assessment of the potential impact of EPAs on these, and a sophisticated negotiating strategy to address them? Will they be able to identify the specific costs associated with EPA-related adjustments and domestic reforms and include specific proposals on the way the EU can support the ACP through EPA or WTO trade policies and rules, as well as through financial support via other instruments to enhance production, supply, and trading capacity and offset adjustment costs? Or do national and regional-level capacity constraints and the apparent end-of-2007 deadline to conclude EPAs mean that the ACP members with the main constraints to identify and development needs to defend (and who are also the neediest in terms of development) are not and will continue to not be able to be fully involved in the preparations for negotiations, thus preventing the ACP from putting forward proposals which can ensure the true development potential of EPAs is realised?

All eyes will be on the European Commission’s (EC) response to the ACP’s proposals. 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 interest of ACP countries.²⁰ The specific reaction of the EC to the ACP proposals will be measured in relation to these statements. Will the Directorate General for Trade of the European Commission ensure that its response is based on sound development assessments and make concessions or change the rules in EPAs or the WTO if necessary? Will they ensure that other parts of the EC and EU member states move with the same urgency as trade negotiators *vis-à-vis* the end-of-2007 deadline to ensure the necessary changes in policies and the effective and timely delivery of

support to increase production/competitiveness? Regardless of whether the issues are dealt with within or outside of the formal EPA negotiations, they will determine the development success of EPAs.

EU member states are increasing pressure on the EC to ensure that the development objectives of EPAs can be realised. In March, the UK government issued a statement calling for EPAs to be designed to deliver long-term development, economic growth, and poverty reduction in ACP countries and challenging the EC's negotiating positions in several areas.²¹ The statement draws heavily on the UK Commission for Africa Report's recommendations on trade and EPAs.²² It calls on the EU to, among other things, ensure that the ACP group 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 the EPA negotiations.

The 2006 Review of EPA and the elaboration of an effective monitoring mechanism of EPAs could play a key role in shaping EPAs and their implementation, with a view to effectively fostering development in ACP regions. But these processes cannot be seen in isolation from the current negotiations, the discussion on accompanying measures, and the determination of support measures, including within the context of the EDF programmatic exercise. In all cases, time is quickly running out and key decisions will have to be made in the coming months.

ACP concerns and mounting frustration

From an ACP perspective, to be of benefit EPAs must be 'economically meaningful, politically sustainable and socially acceptable'. While most of the ACP 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 foster development and alleviate 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 to be beneficial. It is here at the interface between trade and development that the EPAs have yet to emerge as coherent development instruments.

In particular, 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, as well as related institutional and structural weaknesses. This support should be determined by and synchronised with the EPA negotiation and implementation processes. That is, the nature and size of support should be commensurate to the adjustment process required, in line with the ACP development objectives and regional priorities. Proper sequencing of liberalisation commitments and implementation with development support is also of prime importance. The trade-related assistance should be sensitive and efficiently delivered, so as to coincide with the needs of and challenges faced by the ACP. This could entail for certain regions and countries, 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).

In addressing these issues, all ACP regions have noted 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 interest of ACP countries.²³ However, ACP diplomats feel that EC trade negotiators refuse to explicitly take into consideration adjustment

costs and other support measures in the negotiations, leaving these key issues for the ACP to be dealt with in the context of the parallel RPTFs. These are not part of the trade negotiations setting, 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 into the approach and content of the negotiations led by DG Trade officials.

The ACP have continuously stressed that high adjustment costs may seriously mitigate – and even negate – the benefits from market liberalisation through an EPA. These include fiscal reforms to face the loss of import revenues, 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 custom procedures, regulatory developments, etc.), support to develop the supply capacity necessary to benefit from increased market access, etc. In a forthcoming study to be published by the Commonwealth Secretariat, partial elements of the adjustment costs to EPAs have been preliminarily estimated to be at least € 9 billion for all the ACP.

While the ACP negotiators recognise the need to properly calibrate an estimate of the adjustment costs required for the preparation, negotiation and implementation of EPAs, they all note the inadequacy of the current development support mechanisms under the Cotonou Partnership Agreement to face the development challenges of EPAs. In particular, according to ACP negotiators:

1. EPAs should be tools for development

- (a) EPAs should leave ACP 'no worse off': trade liberalisation is just a necessary, not sufficient condition to the effective development of the ACP.
- (b) EPAs should effectively promote development.

2. which require significant adjustment costs

- (c) EPAs will require significant adjustment costs, which if not properly addressed could impede the development of ACP economies;
 - (d) the EU has so far failed to grasp the magnitude of these adjustment costs and their potentially destabilising impact on the ACP; however,
 - (e) adjustment/development assistance and the EPA negotiations are intrinsically linked, and cannot be artificially disconnected;
- ### 3. with timely and effective mechanisms of support delivery
- (f) the current mechanism to address EPAs adjustment costs (including through the RPTFs) do not guarantee the proper coverage of development support required in the context of EPAs, nor the timely deliver of the assistance needed; yet,
 - (g) 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.

In addition, several ACP regions also contended that, in the preliminary discussions on regional integration in the context of the EPA negotiations, the EC strongly promoted its own approach to regional integration processes, based on the EU experience. However, ACP regions emphasised 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 (as in the case of the Caribbean for instance). The emphasis in EPA negotiations should thus be, for each ACP region, on the synchronisation of self-determined regional priorities with 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 EU particular experience. Here again, ACP countries have complained about a perceived dichotomy between the flexible EU political discourse and the more rigid EC negotiators' approach.

The ACP group expressed publicly, for the first

time, its concerns with regard to progress in the Economic Partnership Agreement (EPA) negotiations during a hearing in the European Parliament's International Trade Committee in September 2005. The ACP had already adopted a key EPA declaration critical of the process ahead of the June ACP–EU Council, but this was in the context of negotiations and not officially in the public domain.²⁴

The way forward

Concerns about the development dimension of EPAs, and more generally international trade agreements, are not new. In the context of EPAs, the UK government issued in March 2005 a statement calling for EPAs to be designed to deliver long-term development, economic growth and poverty reduction in ACP countries and challenging the EC's negotiating positions in several areas.²⁵ The statement, which draws heavily on the UK Commission for Africa Report's recommendations on trade and EPAs,²⁶ calls on the EU to, among other things, ensure that the ACP makes its own decisions on the timing, pace, sequencing, and product coverage of market opening. These are concerns regularly expressed by ACP countries, and recognised at the highest political level by the European Commission.

The main challenge is to effectively translate the legitimate concerns about the links between trade and development into the EPA negotiations and identify appropriate support mechanisms to guarantee that adjustment costs and development support are affectively and timely addressed. What remains in the negotiations as they are currently formulated is that the ACP countries will make bound commitments on market access and in return will obtain voluntary best endeavours on the complementary development assistance.

ACP countries and regions must undertake a thorough and systemic needs assessment, based on realistic perspectives. In particular, the case for development in EPAs has sometimes been undermined by unsubstantiated calls to address all development concerns of the ACP in the context of EPAs, from trade-related adjustment costs to systemic calls for infrastructure development support

unrelated to trade matters. While all dimensions of the domestic structure and economy will have an impact on trade performance, not all institutional, structural and policy aspects of a country and/or region can be covered under trade-related negotiations and support. Hence the need for all the ACP countries and regions to undertake a systematic assessment of their specific trade-related needs that they would like to see covered in the context of the EPA negotiations.

Similarly, Europeans (institutions and member states) must recognise that EPAs will entail additional adjustment costs that should be properly addressed for the ACP to benefit from an EPA. Such adjustments should not come at the expense of other legitimate development concerns (infrastructure development, education, health, etc.), that may play a more vital role in ensuring sustainable development and poverty alleviation than a new trade regime. Hence, additional resources and/or mechanisms may be required to tackle trade-related assistance in the context of EPAs.

Effective, transparent and impartial review mechanisms have been suggested, to ensure that the development benefits promised by EPAs do materialise. Such mechanisms could of course facilitate the review of the negotiation process, with transparent updates and opportunities for concrete follow ups. But they could also be used to initiate a broader benchmarking exercise, which could serve to set objectively determined indicators to assess the development aims and content of EPAs. Benchmarks could be identified on real market access issues (including NTBs, TBT and other behind-the-border measures), on policy space (essential in the views of the ACP countries to keep sufficient flexibility in designing domestic policies) and development support. ACP regions could set their own indicators, which could be used as guidelines to identify their priorities and make their development objectives and needs more explicit. Such benchmarks could also prove to be a useful tool for the EC and EU member states in their dialogue with the ACP.²⁷

In identifying complementary measures, EU member states have a key role to play, together with the European Commission. It is important to note that some of the rigidities of the EDF and other EC

co-operation instruments are in part due to the strict conditions imposed by EU member states on Community instruments and procedures. Moreover, the current directives for the EPA negotiations to the European Commission by the Council do not give a mandate to DG Trade to negotiate on development support. It is thus all the more important that EU member states work more closely with the Commission in order to address potential bottlenecks, stimulate co-ordination (among EU member states and with the EC), and identify possible complementarities, notably in the area of trade capacity-building and support measures.

To that end, it is worth connecting the issues of the linkages between trade and development within the Cotonou framework with the current debate on multilateral mechanisms for 'aid for trade',²⁸ since synergies might be identified between the two arena (in terms of experiences, new ideas, implementation mechanisms, etc.).

However, while considering the links between trade and development, it is important to keep in mind that development does not simply mean additional resources. Indeed, the development dimension of EPAs should be included in three main categories:

Trade(-related) rules The trade and trade-related provisions of the agreement regulating trade flows must account for the peculiar needs and weaknesses of ACP countries (for instance asymmetric liberalisation so that the coverage, scope and speed of tariff reduction for ACP countries are limited relative to those for the EU).

Accompanying measures and policies To facilitate the preparation, negotiation and implementation of trade(-related) measures, accompanying and adjustment measures and policies are necessary for ACP countries to fully benefit from and better cope with the challenges of trade liberalisation with the EU (for instance fiscal adjustment programmes and measures to address 'supply-side constraints').

Effective processes for support delivery Besides adequate trade rules and accompanying measures, it is essential that the development support mechanisms to finance and implement them lead to the

effective delivery of assistance. Large portions of unused resources available under the European Development Fund (EDF) and the slow delivery of disbursements and projects implementation in some ACP countries suggest that specific provisions regulating development assistance should lead to more effective planning and timely delivery, as well as strengthened capacity and participation of ACP stakeholders.

Efforts to strengthen the linkages between trade and development should thus tackle these three dimensions.

EU member states should consider working more closely with the European Commission to ensure:

1. 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, possibly with binding commitments; to this end, the RPTF could be formally included in the EPA negotiations structure and its role strengthened;
2. that the EU effectively fulfils its promises on development as a key objective of EPAs, notably taking into consideration the most appropriate sequencing for development objectives;
3. the transparency and accountability of the EPA negotiations process, notably with regards to the integration of the development dimension; to this end, a new monitoring mechanism could be set in place, which would include ACP and EU member states representatives;
4. that ACP (development) concerns are properly addressed in the context of EPA negotiations, possibly through the use of explicit development benchmarks;
5. a positive engagement of the ACP private sector in the EPA negotiations, as it represents a potential driving force in the economic restructuring of ACP economies; and
6. the consistency between EPA and WTO negotiations in terms of principles, rules and support (e.g. 'aid for trade' initiatives), and in particular in addressing development concerns.

Endnotes

1. Widening and deepening of the European integration process led to the transformation of the European Economic Community (EEC) into the European Community (EC) and finally to the European Union (EU). For reasons of clarity, the term EU will be used henceforth.
2. In November 2001, the EU and the ACP obtained another WTO waiver for his transitional period.
3. A discussion of WTO compatibility and EPAs is provided in chapter 3.
4. For an extensive discussion, see Bilal, S. and F. Rampa (2006), *Alternative (to) EPAs: Possible scenarios for the future ACP trade relations with the EU*, ECDFM Policy Management Report 11, Maastricht: European Centre for development Policy Management, www.ecdfm.org/pmr11
5. Article 37.7 of the Cotonou Agreement
6. LDC 'status' is given by the United Nations and applies to developing countries that have both a low average income and low export performance.
7. An exception is still made for bananas, sugar and rice, which are exempted during transitional periods ranging up to 2006 (bananas) and 2009 (sugar and rice). During these transitional periods, trade barriers will already be brought down systematically.
8. See Bilal, San (2005), 'Can the EU Be a Model of Regional Integration? Risks and challenges for developing countries', paper presented at the CODESRIA – Globalisation Studies Network (GSN) Second International Conference on Globalisation: Overcoming Exclusion, Strengthening Inclusion, Dakar, Senegal, 29 August to 31 August, 2005, www.acp-eu-trade.org/library.
9. Article 1(4) states that 'Regional and sub-regional integration processes which foster the integration of the ACP countries into the world economy in terms of trade and private investment shall be encouraged and supported'. Article 2 mentions regionalisation as one of the fundamental principles, noting that 'Particular emphasis shall be placed on the regional dimension'. This can be found in many aspects of the Cotonou Agreement not directly related to the negotiation of EPAs. With respect to economic and trade cooperation, Article 35.2 stipulates 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'.
10. European Commission (2001), 'Orientations on the Qualification of ACP Regions for the Negotiation of Economic Partnership Agreements', Brussels: European Commission. www.epawatch.net/general/text.php?itemID=24&menuID=5
11. European Commission (2004), 'EPA Negotiations: Toolbox', http://europa.eu.int/comm/trade/issues/bilateral/regions/acp/toolbox_en.htm
12. Initially, COMESA planned to establish a customs union by 2004, but implementation has been postponed.
13. That is, while South Africa is a signatory of the ACP-EU Partnership Agreement, it is not entitled to benefit from the European Development Fund and the EU unilateral regime of preferences available to other ACP countries. Instead, the EU and South Africa have concluded a free trade agreement which entails also development assistance component, the Trade, Development and Cooperation Agreement (TDCA).
14. Bilal, San (2004), 'The Coherence of Multi-Level Negotiations: Challenges for developing countries', UNU-CRIS e-Working Papers W-2004/11, November 2004, www.cris.unu.edu/pdf/WP%20BILAL%20SANOUSSI.pdf
15. www.acpsec.org/gb/press/jtdecla2oct.htm.
16. www.acpsec.org/gb/sed/acp0011803-e.htm.
17. '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.' (CPA Art.37(4))
18. Council of the European Union, 'The EU and Africa: Towards a Strategic Partnership', text adopted by the European Council at its meeting on 15–16 December 2005, Brussels, 19 December 2005, 15961/05 (Presse 367), http://europa.eu.int/comm/development/body/tmp_docs/the_eu_and_africa_towards_a_strategic_partnership_european_council_15_16_12_2005.pdf
19. See Julian (2005) TNI Vol 4, No. 1, January 2005, www.acp-eu-trade.org/tni.html
20. <http://trade-info.cec.eu.int/doclib/html/121094.htm> and 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/cmslect/cmintdev/uc390-i/uc39002.htm
21. Economic Partnership Agreements : Making EPAs Deliver for Development, UK Department of Trade and Industry, 22 March 2005 www.dti.gov.uk/
22. Our Common Interest-Report of the Commission for Africa <http://213.225.140.43/english/report/thereport/cfafullreport.pdf>
23. Bilal, San (2005), 'Economic Partnership Agreements: Making them tools for development', background paper presented at the Joint Meeting of Member States' Trade and Development Directors General 'Trade at the Service of Development', 13 October 2005, Brussels, www.acp-eu-trade.org/library and www.ecdfm.org
24. www.epawatch.net/general/text.php?itemID=295&menuID=25. The ACP Committee of Ambassadors' Trade Committee Chairman, Namibian Ambassador Katjavivi, who led the delegation of ACP Ambassadors to the meeting, informed parliamentarians that there has been little progress in addressing fundamental issues of concern to the ACP in a number of key areas, related in particular to the development dimension and regional integration priorities in negotiations with the EC to date. The Ambassadors noted, however, 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.
25. Economic Partnership Agreements: Making EPAs Deliver for Development, UK Department of Trade and Industry and UK Department for International Development, 22 March 2005, www.dti.gov.uk/ewt/epas.pdf
26. Our Common Interest, Report of the Commission for Africa, 2005, <http://213.225.140.43/english/report/thereport/cfafullreport.pdf>
27. See for instance ICTSD and APRODEV (2005), *The EPAs and Sustainable Development: Benchmarks for Pro Development – Monitoring of the Negotiations* www.aprodev.net/main/files/A%20EPAs%20and%20Sustainable%20Development%20FINAL.pdf
28. The 'Aid for trade' debate relates to recent initiatives in the context of WTO Doha Development Round to extend special financial facilities to low-income countries to help them financing adjustment costs and strengthen supply/trade capacity while undertaking trade liberalisation.