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Background

From Lomé to Cotonou: Business as Usual?

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Introduction

The ACP–EU Partnership Agreement signed in Cotonou in 2000 – hereafter called the Cotonou Agreement – has a long history behind it.¹ Part IV of the Treaty that established the 1957 European Economic Community (EEC) contained provisions on the Association of Overseas Countries and Territories. These articles laid the basis for the 1975 Lomé Convention between the European Union (EU) and the African, Caribbean and Pacific (ACP) states. This convention was adapted and renewed until the fourth edition lapsed in February 2000. Trade preferences and aid constituted the main benefits that ACP states received from the EU. Its successor, the Cotonou Agreement, which has been agreed for an unprecedented 20-year period, has also retained trade and economic assistance among the centrepieces of the strategy for achieving its main objectives. A careful scrutiny of the composition of the two groups of partners, as well as of the scope and instruments of co-operation, might enable a conclusion that the Cotonou Agreement is essentially a continuation of past practice. Indeed, Forwood aptly argues that:

Despite modifications in the instruments and objectives, all the features of Lomé have fundamentally been rolled over into the new Convention. In the area of trade, where the most obvious change has taken place, the framework for trade will be determined at some point in the future, and the current arrangements will continue for at least another decade. Rather than radical overhaul, the story of Lomé is one of incremental change.²

In contrast, however, Oyejide and Njinkeu, conclude that ‘Although its trade elements are not yet in place, the Agreement already clearly indicates

that these trade elements will represent a major departure from those associated with the Lomé Convention’,³ thus suggesting that Cotonou amounts to a break with the past.

We will argue in this chapter that there are a number of forces impacting on the longstanding ACP–EU relationship that are altering the nature of the relationship in a fundamental way. We will first analyse the forces that make these changes inevitable, then discuss the forces in the environment of ACP–EU co-operation. We will look at the effectiveness of the Lomé model, analyse the Cotonou Agreement, and then look at the implementation of the new agreement.

Forces of change

The forces that have impacted on the ACP–EU relationship can be classified as either exogenous or endogenous. Some of them have been present for a decade or longer. It is the accumulation of these forces that have made the profound changes to the scope, instruments, and implementation of ACP – EU co-operation almost inevitable.

Exogenous impetuses

International trade liberalisation. A compelling argument for not renewing the Lomé Convention was the recognition that any new ACP–EU arrangement had to be fully compatible with the rules of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO). The preferential trade regime of the Lomé accord, particularly the non-reciprocal duty-free entry of ACP products into the EU market, was a violation of the Most Favoured Nation (MFN) principle of the GATT/WTO that aspires to establish and advance non-discrimination among its member states. Given

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the exclusivity of most of its trade privileges, the conventions were vulnerable on legal grounds. In fact, by 1994, two Dispute Settlement Panels had ruled that the Lomé Banana Protocol was incompatible with Article XXIV of the GATT. In 1997 the WTO's Dispute Settlement Body (DSB) again ruled that the Banana protocol was illegal,⁴ because it discriminated against the so-called 'dollar bananas' of Central America.⁵ Although allowance is made in the GATT/WTO for North-South arrangements such as the ACP-EU pact to obtain a waiver from the WTO for restricted non-reciprocal trade preferences, such exemptions are not meant to be indefinite.⁶ In response, and to remedy the problem by complying with Article XXIV (GATT/WTO), the EU proposed a series of free trade agreements (FTAs), also known as Economic Partnership Agreements (EPAs).⁷

The evolving position of the EU in the world economy. The external economic relations of the

EU show a continuous change, in terms of both geography and policy interventions. A few important changes are highlighted in order to put the shift from Lomé to Cotonou into perspective. First, since 1990, trade between the EU and the rest of the world has been rising at a higher rate than trade among the EU member states (intra-trade), both in exports and in imports. In 2001, 62% of EU exports were destined for other member states. This was 65% in 1990. Second, the 'preferred' partners in Africa and the Middle East have become rather marginalised in EU trade relations, while North America and Asia have remained and gained importance respectively. Tables 2.1 and 2.2 show the destination and origins of EU trade.

The external economic policies of the EU interact with the foregoing changes. For a long time, the EU was in the comfortable position that it could protect parts of its own market from foreign competition – mainly from Japan and the rest of Asia – while it could open up other segments of its markets

Table 1. Extra exports of the EU (by destination, percentage of total extra exports)

	1980	1990	2000	2001
Europe, non-EU	29.8	28.6	30.5	30.9
CEE countries	7.1	6.2	13.2	14
Africa	19	11.9	6.9	7
ACP	8.5	4.4	2.8	2.7
Mediterranean	14.6	12.4	11.5	10.2
North America	15.9	23.9	26.9	26.6
Latin America	6.7	4.3	5.8	5.7
OPEC	19.6	9.5	5.9	6.6
DAE	3.8	7.9	8.6	8.3

Table 2. Extra imports of the EU (by origin, percentage of total extra imports)

1980	1990	2000	2001	
Europe, non-EU	21.5	25.2	27.1	29.2
CEE countries	4.5	5.4	9.9	11.3
Africa	16.5	11.6	8.1	8.4
ACP	8.1	4.7	2.7	3
Mediterranean	9.1	10	8.5	8.8
North America	21.4	23.1	21	20.8
Latin America	6.6	6.1	4.7	4.8
OPEC	30.4	10.5	8.5	7.6
DAE	5.1	8.2	10.5	9.5

Source for Tables 2.1 and 2.2: Eurostat, 'External and intra-European Union trade – *Statistical Yearbook*, 2002 Edition' (Office for Official Publications of the European Communities, Luxembourg, 2002).

in return for improved access to the markets of its most important trading partners, the other OECD countries. Its 'preferred' partners in the Mediterranean and the ACP group were not putting competitive pressure on EU producers. The EU was a zealous defender of non-reciprocal preferences. The present shift to reciprocity should be considered in the light of the changing position of the EU in the world economy, in which the strategy of non-reciprocal preferences no longer produces the desired results. The EU needs good access to fast-growing markets if it is to remain an economic world power. The EU uses both regional and multilateral approaches to take care of its trading interests. Emerging markets are becoming strong negotiating partners in the WTO and are integrating at the regional level. This regional integration in Asia and Latin America entails the risk that the EU faces a deteriorated competitive position in these markets as a result of discriminatory regional trade arrangements.⁸ In this situation, reciprocal trade arrangements with these regional blocs will guarantee market access to these emerging markets.

The WTO is the second channel to gain access to third markets. The non-reciprocal preferences under the traditional Mediterranean agreements and the Lomé Convention jeopardised the negotiating position of the EU in the WTO. In order to maintain these preferences against the pressures as mentioned above, the EU would have had to invest large amounts of concessions in other areas. Given the objectives of the EU in these negotiations, the EU has to use its concessions in a strategic way, that is, to gain access to important markets and to create room for a cautious reform of the Common Agricultural Policy (CAP). The disappointing effectiveness of the Lomé preferences did not constitute a barrier to this line of action. As a result, the EU is now setting up a network of reciprocal trade agreements with third countries. The two options that the Cotonou Agreement offers the ACP countries – reciprocal free trade areas or Generalised System of Preferences (GSP) – are in line with the new external economic policy of the EU.

The end of the cold war. Another impetus for transforming ACP–EU relations was the collapse in

1989–90 of the communist regimes of the erstwhile Soviet bloc and the resultant end of the cold war. The dismantling of the Berlin Wall that had partitioned the European landscape during much of post-World War II affected ACP–EU relations in at least two significant ways. On the one hand, it broadened the horizon and scope of the external economic relations of the EU, that is, the Union had to re-define its relationship with its Central and Eastern Europe (CEE) neighbours, but in the broader context of its overall external economic relations. In redefining the relationship, the EU had to consider short- and long-term perspectives, both of which had profound consequences for the ACP group. In the short term, the EU provided immediate assistance to the governments concerned, especially as they began reforming their economies. In the long term, the EU also provided financial and non-financial resources in the manner of the Phare programme (*Pologne, Hongrie Assistance à la Reconstruction Economique*) to prepare the CEE countries for eventual EU membership. Already, the accession of eight CEE countries to the EU has been agreed to take place in 2004. The ACP group feared that funds that had previously been earmarked for it were being redirected to Eastern Europe. To be sure, the flow of economic assistance from the EU to the CEE countries increased dramatically during the 1990s, while the ACP's share of total EU aid dropped considerably during the same period. In other words, ACP countries would now have to compete for the attention (and resources) of the EU, because of a more immediate and urgent need in the Union's backyard.

Endogenous impetuses

Widening of the European Union. Every enlargement of the EU since 1957 has certainly influenced the need for a different EU–ACP relationship. Each time the EU has welcomed new members to its fold, the relationship between the EU and the ACP group has been affected. Before the first enlargement of the 1970s, EU–ACP relations were tilted in the direction of former French and Belgian colonies in Africa. UK accession in 1973 brought about a more comprehensive and expanded relationship

between the EU and its ACP partners. Specifically, former British colonies were brought into the EU-ACP picture. The enlargement of the 1980s further sensitised EU external relations to Latin America, to the former colonies of Portugal and Spain. Following the 1986 accession, EU contacts with Latin America steadily grew, as Spain, in particular, lobbied for the region within the EU both in the Commission, when policies are being formulated, and in the Council, when the fate of policies are being decided. The 1986 enlargement arguably marked the beginning of the ebbing of the ACP group's importance with respect to the EU's pyramid of privileges. The enlargement of the 1990s, when Austria, Finland, and Sweden joined the EU, continued the ebbing of ACP importance in Brussels, especially as the new EU member states historically had no colonial ties with the ACP countries.⁹ The 1989-90 political earthquakes in Eastern Europe and the impending accession of CEE states to the EU in 2004 will further challenge the importance of the ACP group in the EU. Moreover, it is unlikely that given the magnitude of their own economic problems, the acceding CEE countries, upon accession, would enthusiastically support, for example, a considerable increase in the European Development Fund 10 (EDF 10).

Commission reforms. A second European impetus that informed the changed environment of EU-ACP relations is the growing competence and bureaucratic apparatus of the EU. The increased number of Directorates General (DGs) of the European Commission and of its Eurocrats has translated into a proliferation of ideas and of policies, as well as the diffusion of influence within the supranational entity. More poignantly, the cultivation of an ACP-EU relationship, for which the DG for Development was created, is no longer the only (external/development) policy which has a bureaucracy to lobby on its behalf. Given the importance the EU has attached to enlargement,¹⁰ for instance, the DG and the Commissioner for Enlargement are nowadays among the most sought-after in Brussels.

Deepening integration. The consolidation of European integration is also forcing changes in ACP-EU relations. Most notably and most recently, the

entering into force of the European Union Treaties of Maastricht (1993), Amsterdam (1999), and Nice (2003) necessitated the modification of some aspects of its relationship with the ACP countries (and others). For example, the Common Foreign and Security Policy (CFSP) pillar of the Maastricht Treaty provided the legal underpinnings for the inclusion of political dialogue, economic partnership, and social development in the negotiation of Cotonou. Article 11 of the Maastricht U Treaty provides that the CFSP shall 'preserve peace and strengthen international security ..., promote international co-operation, develop and consolidate democracy, rule of law, and respect for human rights and fundamental freedoms'. In order to comply with the provisions of the article, the EU overtly pushes for development co-operation policies to promote pluralist democracy, human rights, the rule of law, and good governance in ACP societies.

Likewise, ACP-EU relations have had to adjust to the launching of the Single European Market (SEM) initiative, which sought to eradicate trade barriers within the EU. The Banana Protocol of Lomé, for example, restricted the distribution of imported ACP bananas within the EU, which was a clear violation of the free movement of goods. The negotiation of ACP-EU relations also had to be altered by yet another attempt by the EU to consolidate its integration, namely, the debut of the euro. For instance, in 1998 the Council of Ministers for Finance agreed to allow the CFA Franc, which is widely used by France's former colonies in Sub-Saharan Africa (SSA), to be pegged to the euro. This development would likely open up additional EU markets and reduce the colonial mentality of many ACP states *vis-à-vis* their economic relations with the EU.

The conclusion of this section is that a number of factors have necessitated changes in ACP-EU relations. At the turn of the century a fundamental overhaul of the Lomé Convention had become virtually inevitable.

The effectiveness of the Lomé model

The Lomé Conventions were intended to promote the development of the signatory ACP states pri-

marily via trade, economic assistance, and technical co-operation. Granted that the Lomé Conventions were not the only development stimuli to which the ACP countries were subjected between 1975 and 2000, we would expect, all other things being equal, that to the extent that Lomé's were the most assured (at least over a five-year period during the Lomé era) and more generous than any external concessions, there should be, *a priori*, noticeable improvements in pertinent ACP indicators. In other words, between the inception of Lomé in 1975 and its expiry in 2000, we should see evidence of improvement in, say, economic growth, capacity development, etc. Also, compared to non-ACP states that did not receive any or quite as generous concessions ('control group'), there should be evidence of better indicators for the ACP countries.

A non-reciprocal duty-free trade arrangement constituted the cornerstone of the conventions. Thus, more than 90% of ACP exports, predominantly primary commodities, qualified to enter the EU duty-free. The concession was predicated on the neo-liberal view of trade as an engine of economic growth and of development. The evidence, however, is that the share of ACP products in total EU imports from third countries precipitously declined from roughly 8% in 1980 to about 3% in 2001 (see Table 2 above). Non-ACP developing countries of Asia and Latin America performed much better in terms of shares in EU imports from third countries. With respect to the poor performance of the ACP group, most of its members still depend, today, as they did at the start of the first Lomé Convention in 1975, on the exports of essentially the same handful of primary commodities for foreign exchange, thus implying lack of diversification. Indeed, labour-intensive primary products constituted over 80% of ACP exports to the EU, while the share of such products in total extra-EU imports declined during the same period.

Another privilege of the pact was the provision of economic assistance to the ACP countries via the European Development Fund (EDF). Every Lomé Convention was accompanied by a contemporaneous EDF allocation. The five-year EDF scheme earmarked €3 billion (Lomé I), €4.7 billion (Lomé II), €7.4 billion (Lomé III), €10.8 billion (Lomé IV-a),

and €12.9 billion (Lomé IV-bis), primarily in grants and special loans. The EDFs also financed two commodity insurance schemes, STABEX and SYSMIN, for countries that were dependent on agricultural exports and on exports of mineral products respectively. Purposely, the two mitigating insurance schemes were intended to maintain export capacity by compensating ACP exporters of agricultural and mineral products for short-term losses suffered in export earnings.

A third major privilege was the provision of industrial and technical co-operation that would enable the use of the EU's know-how for the industrial development of ACP societies. Other major concessions of the Lomé conventions included special protocols for bananas, sugar and rŭm.

How have the ACP countries performed? In short, they did not successfully avail themselves of the opportunities that the Convention offered. Despite two-and-a-half decades of EU privileges, 40 of the 63 countries in the World Bank's unenviable category of least-developed countries (LDCs) in 2000 were ACP member states.¹¹ In other words, over half of the membership of the ACP group was among the world's poorest countries the year Lomé expired. If one looks at disaggregated data, it appears that some ACP countries, most notably Mauritius, Seychelles and the Caribbean member states, seem to have successfully taken advantage of the Conventions. The fact remains, however, that most ACP economies struggled and even regressed during the Lomé era. In Sub-Saharan Africa (where 95% of the ACP population lives), average growth of gross domestic product (GDP) was 1.7% during the 1980s and 2.4% in the 1990s. Annual population growth, however, was 2.9% and 2.6% respectively. This led to falling per capita incomes during both decades. Poverty increased dramatically in SSA. At the end of the millennium, there were 292 million people living on less than US\$1 a day in SSA. This number had grown by 75 million over 1987–98.¹² According to the Human Development Index, which presents an alternative measure for level of development, only Mauritius and Seychelles among the African ACP states, all but Haiti among the Caribbean ACP countries, and all but Papua New Guinea, Solomon Islands, and Vanuatu among the Pacific

ACP states, ranked above 100.¹³ It is no wonder, therefore, as noted by some observers, that the EU, especially the European Commission suffered from a case of ‘donor fatigue’ and felt it necessary to transform the Lomé Convention. Thus, a ‘business as usual’ renewal of the Lomé Convention had become virtually impossible.

The innovations of Cotonou

The text of the Cotonou Agreement differs substantially from the Lomé Conventions in a number of ways. These differences are reviewed in this section.¹⁴

The nature of the agreement

The Cotonou Agreement is a framework agreement consisting of objectives, principles and options for instruments, while the Lomé Conventions were self-contained rule systems. This appears from several facts. First, the text of the Cotonou Agreement contains only 100 Articles, while Lomé IV-bis contained 369 Articles. Many of the implementation rules have been shifted to the annexes of the Cotonou Agreement. This applies to the trade rules during the preparatory period (2000–08) and the implementation of financial co-operation. Second, the Cotonou Agreement itself has been scheduled to run for a period of 20 years. The practical parts will or can be renegotiated at shorter intervals. The Financial Protocol applies for a five-year period, while the trade regime has to be negotiated before the preparatory period lapses.

The objectives

The Cotonou Agreement is explicit as to its objectives: the reduction and eventual eradication of poverty is the prime goal of the co-operation, ‘consistent with the objectives of sustainable development and the gradual integration of the ACP countries in the world economy’ (Article 1). This is more precise than and different to Lomé IV, in which the parties said that their central objective was ‘to promote and expedite the economic, cultural and social development of the ACP States and to consolidate and diversify their relations...’ (Lomé IV, Article 1). It was only in Lomé IV-bis that improving inter-

national competitiveness was included as an objective of trade development (Article 15a), but it was not an overall objective as it is in the Cotonou Agreement. Thus, the objectives of the new agreement are highly consistent with the objectives of the EU’s policy of development co-operation as formulated in Article 177 of the EC Treaty.¹⁵

The principles of co-operation

The principles of co-operation have been reformulated and refined in the Cotonou Agreement. Under Lomé IV, the principles were equality between partners, the right to self-determination, and security in the EU–ACP relationship. The change in the Cotonou Agreement is striking. There is still the principle of equality and sovereignty of ACP states in determining their development strategies. However, this is now qualified in the sense that there should be ‘due regard for the essential elements ...’ (Article 2). These essential elements are respect for human rights, democratic principles, and the rule of law (Article 9). The three other principles are new:

- participation of other sections of society in the co-operation between the ACP and the EU ‘in order to encourage the integration of all sectors of society, including the private sector and civil society organisations, into the mainstream of political, economic and social life’;
- dialogue and fulfilment of mutual obligations; parties will be accountable to each other for meeting their obligations;
- differentiation and regionalisation; this enables the parties to attune the ways and means of co-operation to the level of development, needs, performance and long-term strategy of the ACP country concerned.

The changes in the principles make it clear that there is a strong wish – at least on the part of the EU – to put the ACP–EU relationship on a new footing: broaden the co-operation from state-to-state activities to state-to-civil society and private sector organisations, make partners more accountable, and demand fulfilment of mutual obligations. Under

Lomé, the EU was obliged to support an ACP country even if it was implementing policies that were contrary to development, human rights, rule of law, etc.

Political dialogue

The political dimension of the ACP–EU relationship has received special attention, in order to make the principles mentioned above effective. To that end, the parties have agreed to regularly engage in ‘comprehensive, balanced and deep political dialogue, leading to commitments on both sides’ (Article 8). Subjects to be discussed in the dialogue include arms trade, excessive military expenditure, drugs and organised crime, and ethnic, religious or racial discrimination. The dialogue will also regularly assess the ‘developments concerning the respect for human rights, democratic principles, rule of law and good governance’. Conflict prevention and peace promotion will be discussed as well.

The political dialogue has got teeth: if a country does not meet its obligations concerning human rights, democratic principles, and the rule of law, ‘appropriate measures’ may be taken. Suspension is a measure of last resort (Article 96). A comparable procedure applies for the obligation of good governance (Article 97).¹⁶

Trade arrangements

For 25 years, Lomé granted the ACP group non-reciprocal preferences that were more generous than the other preferential systems the EU operated. There are two options for the replacement of this system after 2007. Regional groups of ACP countries can negotiate economic partnership agreements (EPAs) with the EU that liberalise trade in a reciprocal way during a 10- to 12-year period. Least-developed ACP countries can opt for the continuation of non-reciprocal preferences under the EU’s preferences for the least-developed countries (LDCs) that cover almost all products.¹⁷ Non-LDC ACP countries that are not in a position to conclude an EPA can try to export under the EU’s Generalised System of Preferences (GSP) after 2007, which is also non-reciprocal in nature. These options are WTO-compatible, and do away with the

discrimination that, based on history and geography, favoured the ACP group. The EPAs are characterised by the mutual obligation to liberalise trade.

From a historical perspective, one might argue that the trade arrangement of the pré-Yaoundé period (1958–63) as embodied in the Fourth part of the Rome Treaty is being re-introduced. This arrangement created one reciprocal free trade area between the dependent ‘associated countries and territories’ and the six original member states. The associates were allowed to levy tariffs for reasons of development, industrialisation and their budgets. The First Yaoundé Convention (1963) *de facto* abolished this unified free trade area and instead created 18 separate FTAs between each independent associated state and the EU.¹⁸ In 1975, non-reciprocity superseded reciprocity at the introduction of the first Lomé Convention.

Financial support

The EDF for 2000–07 contains €13.5 billion.¹⁹ The changes in the aid mechanism are in line with the foregoing. The distribution of resources will be made on more explicit criteria than before: need and performance. The latter is a striking innovation. Under Lomé, ACP countries got indications of the amounts of EDF money they could expect for the five-year period of a particular EDF. There were no general criteria for the allocations. The performance yardstick now introduced will be assessed ‘in an objective and transparent manner on the basis of the following parameters: progress in implementing institutional reforms, country performance in the use of resources, effective implementation of current operations, poverty alleviation or reduction, sustainable development measures and macroeconomic and sectoral policy performance’ (Annex IV to the Cotonou Agreement, Article 3). The financial co-operation will be reviewed on a country-by-country basis. There will be annual operational reviews and mid-term and end-of-term reviews. Following the latter two ‘the Community may revise the resource allocation in the light of current needs and performance of the ACP state concerned’ (Article 5 of the same Annex). The result of this could be that a non-performing ACP country loses most of its EDF support.

A second major change in the aid section is the pledge to support the capacity building of 'community organisations and non-profit non-governmental organisations in all spheres of co-operation' (Article 7). The priority for the development of the private sector is reflected in the fact that private companies of ACP states are eligible for financial support (Article 58), and that an Investment Facility has been created that should supply risk capital and ordinary loans to ACP enterprises (Cotonou Agreement, Annex II, Article 2).

A third change is the demise of the STABEX and SYSMIN mechanisms. Hailed as the major innovation of Lomé I, but unable to effectively tackle the instability of export receipts, these aid instruments have now almost disappeared. ACP states can still use part of their programmable aid for this purpose.

The new agreement in practice

At the time of writing, the Cotonou Agreement has been around for three years.²⁰ An interesting question is whether the fundamental changes show up in the practice of ACP–EU co-operation. We will first take a look at the preparations and negotiations for EPAs. Experiences with political dialogue will be discussed in a subsequent subsection.

The options for a future trade regime

The Cotonou Agreement does not contain a blueprint for the future regime of ACP–EU trade relations. It can be argued that individual ACP countries can choose the most appropriate option out of a range.²¹ However, we will show in this section that the options are constrained.

The Cotonou Agreement stipulates that the transition period between 2000 and 2007 will be used to negotiate EPAs between (groups of) ACP countries and the EU that '... shall aim notably at establishing the timetable for the progressive removal of barriers to trade between the Parties in accordance with the relevant WTO rules' (Article 37.7). This hints at the reciprocity of the trade preferences under the EPAs, which will require the ACP countries to give EU exports free entry to their

markets. However, another way to realise a WTO-compatible trade regime is by way of non-discriminating trade preferences. In this line, the non-LDC ACP countries 'might decide that they are not in a position to enter into EPAs' (Article 37.6). Alternatives will be examined for these countries, which are likely to be found in bringing their exports under the GSP. For the LDCs in the ACP group, 'duty-free access for essentially all products' will be introduced (Article 37.9), which is equal to the 'Everything But Arms' (EBA) initiative for all LDCs. It is striking that the non-reciprocal solutions get comparatively little attention; by going into much more detail the agreement as such seems to prefer the reciprocal trade arrangements for the post-2007 period. The European Commissioner for Trade, Pascal Lamy, confirmed this right before the start of the EPA negotiations in September 2002: '... we ... expect our ACP partners to do their bit to contribute to the common goal. They have to establish sound policies. They must, above all, foster regional integration in return for EU market opening'.²²

The options that the ACP group has for its trade arrangements with the EU are depicted in Figure 1. The least-developed ACP can choose between an FTA and EBA. However, this choice is constrained for many of them. LDCs that belong to a regional trading arrangement (RTA) will be confronted with frictions if they opt for EBA plus membership of the RTA if that latter organisation concludes an EPA with the EU. One could argue that there is no problem as long as the RTA is an FTA itself.

However, most RTAs in SSA (CEMAC, COMESA, ECOWAS, SADC, SACU, UEMOA) are – or pretend to be – custom unions (CUs) or a higher form of integration. A CU has a common external trade policy, which entails the loss of national sovereignty over trade policy. Thus, an EPA will give EU exports free entry to the market of all members of the ACP RTA, including the LDC members. The EU–South Africa Trade, Development and Co-operation Agreement is a case in point. As a result of this agreement, the other SACU (of which South Africa is a member) members have in actual fact entered into a reciprocal free trade arrangement with the EU.²³

Figure 1. Options for future ACP–EU trade arrangements

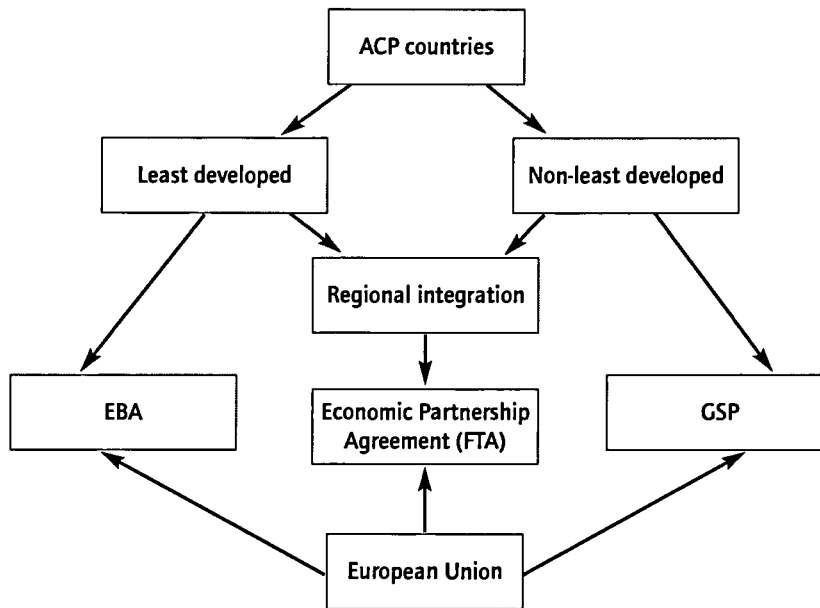


Table 3. Membership of RTAs in Sub-Saharan Africa, 2002

Name ACPRTA	Member states	Of which least-developed
ECOWAS	16	12
UEMOA	8	6
CEMAC	6	2
SADC	13	7
SACU	5	1
COMESA	19	12
EAC	3	2
IOC	4	2
IOR-ARC	6	3

As a result, those LDCs that want to remain members of the RTA to which they belong cannot make use of EBA. The other option is to give up the membership of the RTA in order to profit from EBA and retain the MFN trade barriers with respect to imports from the EU and other third countries. This comes closest to the continuation of the present non-reciprocal Lomé preferences. The inclusion of free entry for bananas (2006) and sugar and rice (2009) in EBA may increase the attractiveness of this option. However, reform of the CAP and liberalisation of trade in agricultural products will have

reduced prices in the EU for these products at the moment of their inclusion in EBA. Furthermore, EBA has an escape clause: safeguard measures may be introduced when LDC exports grow at a high rate ('surge'). Many ACP LDCs now export limited quantities of sugar under the Lomé Sugar protocol to the highly protected EU market. It remains to be seen whether quota-free entry under EBA with more competition and lower EU prices will be an improvement for these countries. In any case, it is expected that ACP countries without sugar quotas under the Lomé Sugar protocol – Malawi, Tanzania and Zambia – will benefit most.²⁴ Another drawback of EBA is that it is a unilateral initiative by the EU, not a contract between parties. The upshot is that ACP LDCs have two options – EPA or EBA – that will both bring fundamental change. The EPA option makes the changes explicit and subject to a time schedule, the EBA option less so. Perhaps that is also the risk of EBA: it might create the illusion with policymakers in ACP LDCs that things will not change and reforms to adapt to the world economy can be postponed to an undefined date in the future.

For the 36 non-LDC ACP countries, the choice

is between EPA and GSP. The EU GSP is regularly adapted to different forces: developmental, protectionist and political pressures play a role. The system is meant to stimulate exports of primarily manufactured goods by developing countries. At the same time it differentiates between sensitive and non-sensitive goods. For the former category, tariffs are only partially lowered (in the 2002/04 version by 3.5 percentage points). Non-sensitive products enter duty-free, except those products for which there are particular core standards in environmental and labour protection. The product coverage of the GSP is narrower than is the case with EBA and the Lomé trade preferences. Furthermore, the GSP suffers from institutional weaknesses. These include lack of contractuality and the presence of rules of origin that are relatively onerous.²⁵ Thus, the GSP will not be a very attractive alternative for most non-LDC ACP countries. This is the more so as the commodity protocols will disappear. If these countries want to maintain their present access to the EU market they will have to enter into EPAs, preferably based on existing RTAs.

Negotiations on the future trade regime

The mandates for the EPA negotiations were drawn up in the summer of 2002. Although these mandates only indicate starting positions, a few differences of opinion are worth mentioning. The sequencing of the negotiations is clearly an issue. The ACP mandate maintains that regional integration among ACP countries could be stifled or undermined by EPAs. For that reason 'ACP States must be allowed to first consolidate their own regional integration processes. Moreover, they do not have the capacity to liberalise in parallel and concurrently with the EU.'²⁶ The EU recognises the problems ACP countries have in realising regional integration. During the transition period, regional integration processes among the ACP should be supported, and EPAs should be introduced after the period has lapsed. The implicit conclusion of the EU is that after 2007, regional integration and EPAs should develop in parallel.

This is a more promising strategy than waiting until effective ACP integration bodies have been created before commencing the EPAs, as the ACP

group prefers.²⁷ Adjustment costs are a related issue. The ACP mandate argues that: 'The positive impact of EPAs needs to be maximised and their adjustment costs minimised so that their implementation is sustainable. In addition, EPAs should result in trade creation and not in trade diversion so as to avoid any welfare loss.' This contradicts the theory and practice of economic integration. The positive welfare effect of trade creation is produced by a better allocation of factors of production, which means a restructuring of economic activities. Trade creation and adjustment are two sides of the same coin. In addition, the ACP mandate calls for 'the provision of additional resources, with rapid and flexible disbursement procedures'. The EU mandate does not mention additional resources and instruments for adjustment. Instead, it contains a plea to use the period up to 2008 to strengthen the ACP capacity to define and implement appropriate trade strategies and policies in order to enhance competitiveness, to strengthen regional organisations and integration 'where appropriate with assistance to budgetary adjustment and fiscal reform ...'. This seems to imply that the EU wants to use existing EDF funds for adjustment.

A third important issue will be market access. The ACP countries want a guarantee that they will not be worse off after 2007 in their trade relations with the EU compared to their present position. Given the interdependent nature of trade policies, this guarantee is difficult to imagine. On the other hand, improved market access for ACP-sensitive products in agriculture, clothing and other sectors would be helpful in creating quick results from EPAs. The EU is reluctant to offer this. After repeating that at present 93% of ACP exports enter the EU duty- and quota-free, the EU promises that 'The EU will further abolish remaining tariffs, focus on co-operation with the ACP countries to remove non-tariff barriers and assess technical hurdles (such as rules of origin), with a view to facilitating market access for the ACP'.²⁸

Given these starting positions, it is doubtful whether viable EPAs will come out of the negotiations. Both sides are reluctant to invest large amounts of political capital in EPAs. The ACP countries are afraid of restructuring and adjustment

and for that reason 'cannot *a priori* accept to provide reciprocity in EPAs with the EU' according to the ACP mandate. This is a denial of the basic presumption of the EPA concept. The EU is setting high expectations on dynamic and non-traditional effects of FTAs. The problem is that these effects, if they materialise, will do so only in the long run, while successes in the short run are vital to keep the integration going. These could be produced by improving market access for the ACP in the EPA framework and by creating funds to cushion external shocks on ACP RTAs that are implementing EPAs with the EU.

Political dialogue

The EU and the ACP are conducting political dialogues both collectively during negotiations and between the EU and individual ACP countries. Some cases in the latter category will be briefly analysed, in order to illustrate the practical applications of Article 96 of the Cotonou Agreement.²⁹

In 2000, a consultation meeting was initiated by the EU, in reaction to irregularities during the elections in Haiti earlier in the year. There appeared to be a relatively sharp ACP–EU difference of opinion on the significance of the irregularities involved, and more generally on the reading of the situation in Haiti and the necessity for and appropriateness of sanctions. The EU broke off the discussions with Haiti and imposed sanctions. The second tranche of the financial resources available for Haiti under EDF 8 (Lomé IV-bis) was blocked and direct budget aid was stopped. Remaining aid funds were re-directed, and the procedure for allocating resources under EDF 9 was halted.

In mid-October 2000, consultations were held with Fiji in response to a coup. It was reported that Fiji came forth with sufficient information on the measures it had adopted for a return to constitutional rule. In response, the EU took note of Fiji's plans and made a number of suggestions for concrete measures such as restoring the constitution and bringing the authors of the coup to justice. The EU also took Fiji's request for additional aid into consideration. The consultation process was wrapped up the following year.

The EU Council of Ministers had taken rela-

tively mild countermeasures in this case. Only the notification of the allocation of Cotonou resources for Fiji, and the financing and implementation of new projects from Lomé EDF funds, were postponed until elections had taken place.

A consultation procedure with Cote d'Ivoire was begun in 2001, because of human rights violations, irregularities and violence during presidential and legislative elections. Cote d'Ivoire reportedly answered EU questions adequately. Both sides stressed that consultations were held to remedy problems, and not merely to apply sanctions. Several months of intensive dialogue ensued, after which the EU Council of Ministers ended the consultation process. As a result of the measures taken by Cote d'Ivoire, the Council decided to gradually resume co-operation, including the allocation of EDF 9 resources.

Consultations were held with Zimbabwe as the situation with respect to democracy and human rights deteriorated in 2001.³⁰ In the run-up to the presidential elections in March 2002, frictions in the country escalated. The EU Council of Ministers expressed its concerns in January 2002, despite the promises of the Zimbabwean government that the elections would be free and fair. The Council threatened to discontinue consultations if Zimbabwe prevented the deployment of an EU delegation of observers. One month later the Council decided to withdraw the observers and to introduce 'smart' sanctions against President Robert Mugabe and 19 of his associates. The coverage was expanded to a larger number of officials and the wife of the president in the summer of the same year. The sanctions included a ban on travel to the EU, a freezing of the assets of the individuals concerned and a ban on arms sales to Zimbabwe. Humanitarian aid and support for the population in social sectors were not affected.

These four cases show that the EU is prepared to use the expanded opportunities for political dialogue under Cotonou to effect change in ACP societies. Thus, the EU is monitoring the ACP much more closely than before, and starts consultations in the relatively early stage of a deteriorating situation.

Summary and conclusions

This paper argues that a 'business as usual' approach for ACP–EU co-operation was no longer tenable for the EU for different reasons. The old model had proven to be vulnerable to complaints under the WTO regime, and was no longer compatible with the interests and aspirations of the EU as a serious international actor. Due to its rising dependencies on international markets, reciprocity has become an essential mechanism for the EU to open up foreign markets. The failure of the Lomé model to produce visible progress in standards of living had seriously undermined the credibility of the EU as a leading actor on development issues. At the same time, the changes in the post-cold war climate for development also induced the EU to urge extensive amendments to ACP–EU co-operation. The Cotonou Agreement introduces a new approach that is characterised by reciprocity, but that is still to be worked out. The Cotonou Agreement has introduced some major changes into the ACP–EU relationship. A few phrases that are indicative of the philosophical underpinnings of the new agreement include:

- mutual obligations: the time that ACP countries had unquestioned entitlements for aid and non-reciprocal trade preferences is history;
- dialogue and reviews in order to keep the partners accountable and eventually to redistribute the benefits of co-operation to those countries that perform better;
- participation of non-state actors in order to increase ownership and improve the distribution of the benefits of co-operation;
- private sector development; the emphasis on this sector has been translated into an action programme and facilities for support.

The practical consequences of the aforementioned have been analysed in more detail above for the new accord. Although the ACP countries have different options (EPA with reciprocal free trade or GSP treatment), the GSP option is not attractive for the non-least developed ACP countries as a result of more limited coverage, smaller and eroding preferential margins, and an absence of contractuality. For

the least-developed ACP countries, the EBA option seems attractive, but suffers from the same non-contractuality, and offers preferences in areas/products whose benefits are fast eroding due to global trade liberalisation and CAP reforms. Thus, most ACP countries will opt for the conclusion of EPAs, and will have to offer the EU free access to their markets. This is a time-consuming process, which will not start until 2008 and is not expected to be fully implemented before 2020. But the fundamental change is there, and has been set in the Cotonou Agreement.

The idea that human rights, the rule of law, and democracy are part of, or closely linked with, development has been amply acknowledged in the Cotonou Agreement. There is now a demonstrated preparedness by the EU to demand a minimum application of the aforementioned from ACP countries.

This article has not tried to determine whether the new approach is a better instrument for development. That assessment is premature at this point. To that end, it is worth reiterating the following observations. First, not much should be expected from the new trade arrangements during the first eight years of the agreement, as they are still being negotiated. Second, the new aid regime should reward countries that perform well; more aid will flow to non-governmental and private sector organisations. In combination with improved human rights implementation and democratic institutions, this might contribute to stronger incentives for individuals and organisations to direct their energy into productive activities, thus increasing the rate of economic development. However, ACP–EU co-operation is only one of the many factors impacting the development process in ACP countries. Even if the Cotonou instruments are put into practice in an optimal way, ACP development might be impeded by armed conflicts, global economic shocks, the success or failure of multilateral trade negotiations, and ACP governments that decide to follow policies that do not necessarily promote development.

In the final analysis, the Cotonou Agreement should not be regarded as just another version of the Lomé Conventions. The new agreement introduces more reciprocity, more mutual obligations in politi-

cal and economic terms, and more pressure for liberalisation in ACP economies. What perhaps is the most revolutionary change in the Cotonou Agreement is that the EU appears to be determined to put the new approach into practice.

Endnotes

1. G. Faber (1982) *The European Community and Development Co-operation*, Van Gorcum, Assen and E.Z. Grilli (1993) *The European Community and the Developing Countries*, Cambridge University Press, Cambridge.
2. G. Forwood (2001) 'The Road to Cotonou: Negotiating a Successor to Lomé' in *Journal of Common Market Studies* 39, pp. 438–9.
3. A. Oyejide and D. Njinkeu (2001) 'African Preparation for Trade Negotiations in the Context of the ACP–EU Cotonou Partnership Agreement'. Background document prepared for the Conference of African Trade Ministers held in Abuja (Nigeria), August 2001, p. 1.
4. See, among others, Eurecom (October 1995) p. 2, (October 1997) p.1, and (November 1998) p. 2.
5. The Central American countries were Ecuador, Guatemala, Honduras and Mexico.
6. The ACP group and the EU indeed requested such a waiver from the WTO after the mid-term review as a transitional measure to help mitigate the impact of the cessation of non-reciprocity in EU–ACP relations. The waiver was granted in 1997 and expired in February 2000.
7. *The Courier*, No. 173, 1999, pp. 72–4 and *West Africa*, 9–22 November, 1998, pp. 798–802. See also, European Commission, *Green Paper on relations between the European Union and the ACP countries on the eve of the 21st century: Challenges and options for a new partnership* (Brussels, 1996).
8. L.A. Winters (2000) 'EU's Preferential Trade Agreements: Objectives and Outcomes' in P. van Dijck and G. Faber (eds) *The External Economic Dimension of the European Union*, Kluwer Law International, The Hague, pp. 195–223.
9. Sweden, however, has a credible history of generously assisting LDCs (especially SSA) financially.
10. A Commissioner with the enlargement portfolio was created under the Prodi presidency to underscore the seriousness with which the EU treats the issue.
11. The World Bank (2000) *World Development Indicators*, The World Bank, Washington, DC,.
12. The World Bank (2001) *World Development Report 2000/2001*, Oxford University Press, Oxford, p. 4.
13. *The Courier*, September 2000.
14. For a more detailed analysis of the text of the agreement, see K. Arts (2003) 'ACP–EU Relations in a New Era: The Cotonou Agreement' *CML Rev* 40, pp. 95–116. The text of the Cotonou Agreement is reproduced in *The Courier*, September 2000.
15. One might argue that poverty reduction has a higher priority in the Cotonou Agreement compared with the EC Treaty.
16. For a more elaborate discussion on good governance in the Cotonou Agreement, see P. Hilpold (2002) 'EU Development Co-operation at a Crossroad: The Cotonou Agreement of 23 June 2000 and the Principle of Good Governance', *7 EFA Rev*, pp. 53–72.
17. Exceptions are arms, and, temporarily, some temperate zone agricultural products. This system is indicated as the Everything But Arms (EBA) initiative. See next section for more details on EBA.
18. G. Faber (1982) *The European Community and Development Co-operation*, Van Gorcum, Assen, p. 10.
19. There remained €9.9 billion of previous periods and the European Investment Bank has € 1.7 billion available.
20. Although formally speaking the agreement only went into force on 1 April 2003, as a sufficient number of parties (including all EU member states) had ratified by that date, it has been implemented since its signing on 23 June, 2000.
21. F.A.S.T. Matambalya and S. Wolf, 'The Cotonou Agreement and the Challenges of Making the New EU–ACP Trade Regime WTO Compatible' (2001) *Journal of World Trade* 35, pp. 123–44.
22. Interview with Pascal Lamy in *The Courier*, No. 193, July–August 2002.
23. P. Goodison (1999) Impact of the SA–EU TDCA on the BLNS: Possible Remedial Steps. Paper for the conference Regionalism and a Post-Lomé Convention Trade Regime: Implications for Southern Africa. Available at: <www.igd.org>. K. Mbekeani, 'Impact of the SA–EU TDCA on the BLNS'. Ibid.
24. S. Wolf (2002) 'CAP Reform and ACP Preferences: What is at Stake for ACP Countries?' in *Trade Negotiations Insights. From Doha to Cotonou* No. 4, pp. 1–3. Available at <www.ecdpm.org>.
25. C. Stevens (2004) 'The Generalised System of Preferences, the Cotonou Agreement and Development in ACP Countries' in O. Babarinde and G. Faber (eds) *The Cotonou Agreement and Development: The ACP Countries and the EU in the 21st Century*, Chapter 5, Martinus Nijhoff Publishers, Leiden Boston.
26. EPWatch, 2002, available at <www.epawatch.net/general/start/php>.
27. G. Faber (2004) 'Economic Partnership Agreements and Regional Integration among ACP Countries' in O. Babarinde and G. Faber (eds) *The Cotonou Agreement and Development*, Chapter 4 (see Note 24).
28. EU Press release, 2002.
29. These cases are analysed by K. Arts (2004) 'Political Dialogue in a "New" Framework' in O. Babarinde and G. Faber (eds) *The Cotonou Agreement and Development*, Chapter 7 (see Note 24).
30. This case is based on EU Council, General Affairs and External Relations Council of the EU, summaries of the debates as published by the EU at <www.europa.eu.int/comm/external_relations/human_rights/gac.htm>.