

FACT SHEET NB.1

UNDERSTANDING THE ECONOMIC PARTNERSHIP AGREEMENTS (EPAs)

SYNOPSIS

This Analytical Note is part of a series of Fact Sheets designed to overview and assess the development implications of the Economic Partnership Agreements (EPAs), which the EU is currently negotiating with 75 countries in Africa, the Caribbean and Pacific (ACP). The purpose of these Fact Sheets is to examine the existing material on EPAs and to provide an analysis of their potential impact on ACP countries. The Fact Sheets seek to increase the understanding of the substantive issues at stake in the negotiations, thereby enabling policy-makers, lobbyists and campaigners to make informed decisions about how to engage with EPAs.

This Fact Sheet Nb.1 consists of an overall introduction to the EPA and describes their nature and structure, their objectives, and their timelines.

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FACT SHEET NB.1: UNDERSTANDING THE ECONOMIC PARTNERSHIP AGREEMENTS (EPAs)

1. WHAT ARE EPAs?

1. “EPAs” are the Economic Partnership Agreements, which the EU is currently negotiating with 75 of its former colonies in Africa, the Caribbean and the Pacific (ACP). EPAs are essentially free trade agreements (FTA) that envisage the creation of a free trade area between the EU and ACP countries, in which there are no duties on goods imported and exported between these countries. FTAs, such as EPAs, are based on the principle of reciprocity – that is, when one party to the agreement makes a concession by lowering its tariffs on goods, the other parties reciprocate by lowering their tariffs too. The lowering of tariffs in this way is commonly known as trade liberalisation.

Box 1.1. Explaining the Terms - EPAs, FTAs and RTAs

Are the Economic Partnership Agreements, which the EU is signing with ACP countries, a free trade agreement (FTA) or a regional trade agreement (RTA)? The answer is that they are both. FTAs are a subset of RTAs; there are many different types of regional trade agreements, of which an FTA is only one. In an FTA, trade is duty-free between the parties to the agreement. Other types of regional trade agreements include customs unions, common markets and economic and monetary unions. For an explanation of the differences between these RTAs (see Fact Sheet No. 4 Regional Integration).

2. In the EPA negotiations, ACP countries are split into six regional groups. Each of these groups is negotiating a separate EPA with the EU (see Table 1.1 ACP Negotiating Groups). These groups are: West Africa; East and Southern Africa (ESA); Southern Africa Development Community (SADC)¹; Central Africa; the Caribbean (CARIFORUM); and the Pacific.

¹ In other studies the SADC EPA Group is referred to as ‘SADC-minus’ in order to show that not all countries that belong to the SADC regional bloc are negotiating in the SADC EPA Group, including Democratic Republic of Congo (DRC), Madagascar, Malawi, Mauritius, Rwanda, Zambia and Zimbabwe. In this note, the term SADC or SADC Grouping is used to refer to the SADC EPA group, unless otherwise mentioned.

Table 1.1. ACP Negotiating Groups²

Caribbean	Central Africa	Eastern and Southern Africa	Pacific	SADC	West Africa
Antigua & Barbuda	Cameroon	Burundi	Cook Islands	Angola	Benin
Bahamas	CAR	Comoros	Fiji	Botswana	Burkina Faso
Barbados	Chad	Djibouti	Kiribati	Lesotho	Cape Verde
Belize	Congo	Eritrea	Marshall Islands	Mozambique	Côte d'Ivoire
Dominica	DRC	Ethiopia	Micronesia	Namibia	Gambia
Dominican Republic	Equatorial Guinea	Kenya	Nauru	South Africa ³	Ghana
Grenada	Gabon	Madagascar	Niue	Swaziland	Guinea
Guyana	Sao Tome & Principe	Malawi	Palau	Tanzania	Guinea-Bissau
Haiti		Mauritius	Papua New Guinea		Liberia
Jamaica		Rwanda	Samoa		Mali
St. Kitts & Nevis		Seychelles	Solomon Islands		Mauritania
St. Lucia		Sudan	Tonga		Niger
St. Vincent & the Grenadines		Uganda	Tuvalu		Nigeria
Suriname		Zambia	Vanuatu		Sierra Leone
Trinidad & Tobago		Zimbabwe			Senegal
					Togo

Source: ACP website, www.acpsec.org/en/acp_states.htm and EC external trade website, http://ec.europa.eu/trade/issues/bilateral/regions/acp/plcg_en.htm

2. WHY ARE EPAS IMPORTANT?

3. EPA negotiations were launched in September 2002, and are set to conclude by the end of 2007. EPAs have important implications for development because they will overhaul the entire way in which EU-ACP trade relations are

² Note: There are 79 ACP member states, of which only 75 are negotiating an EPA. Those countries not negotiating an EPA include, Cuba, East Timor, Somalia (because of political instability and the absence of an effective government).

³ South Africa has already concluded a bilateral FTA with the EU (the Trade and Development Cooperation Agreement, TDCA), but on 12 February 2007 the European Council of Ministers adopted a modification to the EC's EPA negotiating directives with ACP countries with the effect of including SA into SADC EPA configuration under certain conditions.

http://ec.europa.eu/trade/issues/bilateral/countries/southafrica/pr140207_en.htm. The figures regarding the ACP group provided in this note exclude South Africa unless otherwise mentioned.

structured. Unlike previous EU-ACP agreements that provided unilateral preferential access to the EU market for ACP exporters, an EPA requires that ACP countries reciprocate by liberalising tariffs on EU exports entering their own market, as well as agreeing to additional binding rules in new areas such as investment, competition and services. This move to reciprocal liberalisation will entail fundamental changes in ACP economies.

4. The stated aim of EU-ACP trade relations is to 'foster the smooth and gradual integration of the ACP states into the world economy...promoting their sustainable development and contributing to poverty eradication'.⁴ However, the structure and content of the EPA negotiations have raised concerns about the impact these agreements will have on ACP countries and their efforts towards poverty eradication, regional integration and economic growth.

5. Whether EPAs contribute to, or detract from, the sustainable development of the ACP region, it is undeniable that their impact will be significant. The EU is the ACP's largest trading partner: nearly 40% of all ACP exports go to the EU. EPAs will affect 39 of the world's 50 least developed countries (LDCs) and the lives of over 720 million people who live in the ACP region. It is therefore crucial that greater attention is paid to the development implications of these agreements.

3. WHY HAVE THE EPA NEGOTIATIONS COME ABOUT?

3.1. HISTORICAL CONTEXT.

6. EPA negotiations have been sparked by the expiry of previous trade agreements between the EU and ACP. Since 1976, political and economic relations between these two blocs have been governed by a series of five-year agreements, known as the Lomé Conventions. In recognition of the EU's historical legacy to its former colonies in Africa, the Caribbean and the Pacific (ACP), these Conventions provided aid and trade preferences to the ACP. The Lomé trade preferences granted preferential access to the EU market for ACP exporters, without requiring them to reciprocate.

7. The last Lomé Convention (Lomé V) ended in 2000, and was replaced by the Cotonou Partnership Agreement (the Cotonou Agreement). Signed on the 23 June 2000, the Agreement's central objectives included reducing poverty, and promoting the sustainable development and gradual integration of ACP countries into the world economy.⁵ The Cotonou Agreement, which covers the

⁴ Article 34.1 of the 'Cotonou Agreement' (2000) Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its member states, of the other part, signed in Cotonou, Benin, 23 June 2000.

⁵ Article 1 of the Cotonou Agreement (2000)

period 2000-2020, comprises of cooperation in three pillars: political; development; and economic and trade cooperation. Under the economic and trade pillar, the EU and ACP agreed to conclude new trading arrangements compatible with WTO provisions, which would be called Economic Partnership Agreements (EPAs). The EPAs would replace trade preferences at the start of 2008, and would entail the progressive removal of trade barriers between the ACP and EU, leading ultimately to reciprocal trade liberalisation.

8. Although EPAs will bring into effect new EU-ACP trade arrangements from January 2008, the Cotonou Agreement itself continues for another 20 years. Specifically, the agreement's provisions under the two other pillars of political cooperation and development assistance will continue to remain in force until 2020.⁶

3.2. WTO-COMPATIBILITY: FROM COTONOU TO EPAS

9. Trade negotiations have come about due to the need for EU-ACP trade relations to be 'WTO-compatible' – that is, in compliance with WTO rules. The WTO rules that govern the provision of unilateral trade preferences are contained in the 'Enabling Clause'.⁷ The Enabling Clause provides for the granting of trade preferences so long as they only differentiate between countries according to their level of development.⁸ This means that any preferential trade agreement must either grant preferential access to all developing countries, or to all LDCs. By providing preferential access only to ACP countries, excluding non-ACP LDCs and non-ACP developing countries, the Lomé Conventions were incompatible with the Enabling Clause. Since 1995, the legality of the EU's banana and sugar regimes has been challenged by several developing countries, including Brazil, Ecuador, Honduras, Guatemala, Mexico and Thailand, which have been denied similar levels of access to the EU market as ACP countries.⁹

⁶ Development finance and technical assistance, currently available under the European Development Fund (EDF) through the Regional Indicative Programmes (RIPs) and the National Indicative Programmes (NIPs) will still be provided to ACP countries. S. Bilal, and F. Rampa (2006) 'Alternative to EPAs: Possible Scenarios for the Future ACP Trade Relations with the EU', Maastricht: ECDPM, Policy Management Report 11. p.17

⁷ The 'Enabling Clause' of the GATT allows for preferential regional trade agreements, which are not to subject to the discipline of GATT Article XXIV. See GATT document L/4903 'Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries', 28 November 1979.

⁸ LDC is an official category of countries, which according to the UN, have a Gross National Income (GNI) per capita of less than US\$750 (or inclusion) and above US\$900 (for graduation). There are 50 LDCs in the world, of which 39 are ACP countries.

⁹ In 2002, Brazil, Thailand and Australia challenged the legality of the EU's sugar regime. The WTO Appellate Body ruled in favour of these countries, establishing that the EU export subsidies on sugar were illegal, see WT/DS265/AB/R 'European Communities – Export Subsidies on Sugar, Report of the Appellate Body, 2005, 28 April 2005. In 1995, Ecuador, Guatemala, Honduras, Mexico and the US filed a complaint before the WTO in 1996, alleging that the EU regime for importing bananas violated the GATT. The WTO panel ruled the EU's

10. In response to these legal challenges, the EU, with the support of ACP countries, successfully applied for a Waiver from the WTO for the extension of trade preferences granted under the Cotonou Agreement. The Waiver was established in November 2001 and is due to expire on the 31 December 2007.

11. The Cotonou Agreement also stipulates that it is imperative that any new trade agreement negotiated between the ACP and the EU comply with WTO rules. Given the nature of existing WTO rules and the imminent expiry of the Waiver, there are two obvious options for making EU-ACP trade WTO compatible; to change the way that preferences are granted by the EU to ensure they comply with the Enabling Clause, or to maintain a preferential trading system between the EU and ACP by bringing it in line with the WTO rules on regional trade agreements. The EU is proposing the latter, which would take the form of an Economic Partnership Agreement (EPA).

3.3. AN EPA FRAMEWORK – THE KEY PRINCIPLES OF WTO COMPATIBILITY

12. Under existing rules, there are two provisions allowing WTO Members to enter into a favourable trade relationship without extending benefits of that relationship to all other WTO Members:

- a. *“Enabling clause”*: allows developed countries to grant preferential tariff treatment to developing countries. However, benefits must be extended to all developing or all LDCs or at least to all countries that are “similarly situated”, i.e. that face the same development, financial and trade needs.¹⁰ Preferences cannot discriminate in favour of a pre-determined selection of developing countries, such as the ACP – which do not constitute a category of WTO Members;
- b. *Article XXIV of GATT*: allows for derogations from the WTO MFN obligation among preferential partners in the context of a regional trade agreement. The key provision of Article XXIV is the principle of reciprocity – that all parties to a regional trade agreement must liberalise trade between them. In effect, they must enter a ‘free

tariff quota allocation, particularly to the ACP countries, was contrary to the non-discrimination rule (Article 13 of the GATT) and ordered the EU’s import regime to be amended. WT/DS27/AB/R *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, 9 September 1997.

¹⁰ “In granting tariff preferences, “preference-granting countries are required, by virtue of the term “nondiscriminatory”, to ensure that identical treatment is available to all similarly-situated GSP beneficiaries, that is, to all GSP beneficiaries that have the “development, financial and trade needs” to which the treatment in question is intended to respond”. Report of the WTO Appellate Body on the case EC – Tariff Preferences (WT/DS246/AB/R, April 2004) , at paragraph 173. Available at: [http://www.worldtradelaw.net/reports/wtoab/ec-preferences\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/ec-preferences(ab).pdf)

trade agreement' (FTA). The two main aspects to gauge reciprocity in an RTA are:

- i. Liberalisation of "substantially all trade"; and
- ii. Implementation of concessions over a "reasonable length of time"

13. Because the EC will not extend preferential (Cotonou) treatment to all other developing countries under the Enabling Clause - which would erode the preference that ACP countries enjoy in the EC market, EPAs are being designed to conform to Art. XXIV of GATT. However, conformity with Art. XXIV is not straightforward because the interpretation of these two requirements of Article XXIV remains ambiguous and are currently subject to negotiations under the WTO Doha Round.

14. Therefore, the way the EC interprets conformity with Art. XXIV of GATT will largely influence the final structure, scope, ambition, and pace of implementation of the EPAs. This will determine the level of reciprocity that is expected from the ACP, including how many products they will be able to exclude from liberalisation and how fast they will have to liberalise their markets.

15. Finally, it is important to emphasize that Art. XXIV of GATT only concerns the liberalisation of merchandise trade. Therefore, nothing in the WTO would require EPAs to cover trade in services and trade-related disciplines on investment, competition, government procurement or intellectual property.

Extent of Trade Liberalisation: 'Substantially all Trade'

16. Article XXIV stipulates that restrictions should be lifted on 'substantially all trade'. However, the extent to which trade has been liberalised between parties to an RTA can be assessed by checking the number of tariff lines (products) on which preferences have been exchanged (in other words, assess how many products have been excluded in the RTA, which is referred to as a quantitative test). Alternatively, the extent of liberalisation can be measured through the value or volume of mutual trade that has been liberalised (referred to as a qualitative test).

17. The EU's interpretation of this clause is that an FTA (and thus an EPA) should entail liberalisation of 90% of the *total value of trade* among the parties. The 90% threshold can be taken as the average of the total trade between the partners, allowing for an 'asymmetrical approach' to liberalisation. For example, in the EU-South African FTA (the Trade Cooperation and Development Agreement or TDCA), the EU liberalised 95% of its trade with South Africa, while in return, South Africa agreed to liberalise 86% of its imports from the EU. Thus, in the context of EPAs, it is generally understood that the EU is seeking the

liberalisation of 90% of the total value of trade between the EU and ACP. Under this interpretation, if the EU liberalises 100% of its trade, ACP countries would have to liberalise 80% of their trade. This would leave ACP countries able to protect only 20% of their trade with the EU.

Transition Period: 'Reasonable Length of Time'

18. Article XXIV establishes that the period of time that countries have to liberalise their trade should be a 'reasonable length of time'. An understanding of Art. XXIV was established between WTO members in 1994 and it was agreed that the 'reasonable length of time' should be interpreted as no more than 10 years, although a longer period of time may be applied in exceptional cases.¹¹

19. In practice, many FTAs have included longer periods of time. For example, in the FTAs which the EU concluded with South Africa and Morocco, both developing countries were given a 12 year transition period. The US-Australia FTA is subject to a 18-year implementation period.

20. In a recent proposal to the WTO, ACP governments proposed that developing countries be granted a minimum transition period of 18 years.¹² However this has not been accepted to date and the working assumption for EPAs is that the transition period will be 12 years. This would give ACP countries until 2020 to liberalise substantially all of their trade with the EU. Nevertheless, ACP negotiators have often argued that to be too short a period and requested implementation periods of 20 years and beyond.

4. WHAT IS THE TIMELINE AND SEQUENCING OF EPA NEGOTIATIONS?

21. The Cotonou Agreement sets out the procedures for EPA negotiations.¹³ It states that EPAs shall be negotiated during a five-year preparatory period, starting from September 2002 and concluding on the 31 December 2007. There are several stages involved in the EPA negotiations.

22. These include:

- EU-ACP level negotiations with all ACP countries to address horizontal issues of interest across all regions;
- EU negotiations with each ACP negotiating group to establish the framework of the agreement;
- Negotiations to agree on the substantive content of each EPA;
- Text-based negotiations on a draft agreement;

¹¹ GATT document LT/UR/A-1A/1/GATT/U/4, 'Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994', 15 April 1994.

¹² WTO document TN/RL/W/155, 'Negotiating Group on Rules - Submission on Regional Trade Agreements - Paper by the ACP Group of States', 28 April 2004.

¹³ Article 37 of the Cotonou Agreement.

- Negotiations to consolidate and finalise each EPA by the end of 2007.

23. The official timeline for each EPA regional group is set out in Road Maps established for each EPA Region.¹⁴ However, the official Road Maps have not advanced according to plan and, while the extent of ground covered differs considerably from one region to the other, all EPA regions face delays and there is confusion and ambiguity over the precise status and state of play of each negotiating group.

24. The first set of EU-ACP wide negotiations on horizontal issues, and discussions concerning the frameworks for each EPA have been completed, but sometimes divergences regarding controversial elements were forwarded to subsequent negotiating phases without being settled. Framework agreements exist for all EPA regions and some have reached the stage of drafting texts, but no region is in the finalisation stage. After a decision has been taken on these draft agreements, the next phase of substantive negotiations on the precise content of the agreements (for example, the market access provisions) will begin.

25. It is worthwhile noting that, since the beginning of 2007, many stakeholders in many regions have started questioning the ability of the EPA process to be completed by the end of 2007 as originally planned. Some regions have officially requested the EU to consider extending the negotiating timeline to adequately cover all outstanding negotiating areas.¹⁵

5. WHAT IS THE BROADER POLITICAL, ECONOMIC AND STRATEGIC CONTEXT TO EPAS?

26. The ACP countries are highly dependent on the EU in economic and political terms. This is largely due to the legacy of the historical connection between the EU and ACP countries. For the EU, on the other hand, the ACP region is in many ways economically insignificant, accounting for very little in terms of trade or FDI. The asymmetries between the EU and ACP are vast.

¹⁴ These can be accessed at:

West Africa: 'Road Map for EPA Negotiations between West Africa and the European Community' (4 August 2004) EC Trade website http://trade.ec.europa.eu/doclib/docs/2004/october/tradoc_118923.pdf

Caribbean: 'Plan and Schedule for CARIFORUM and EU Negotiation of an EPA' (22 April 2004) EC Trade website http://trade.ec.europa.eu/doclib/docs/2004/april/tradoc_116912.pdf

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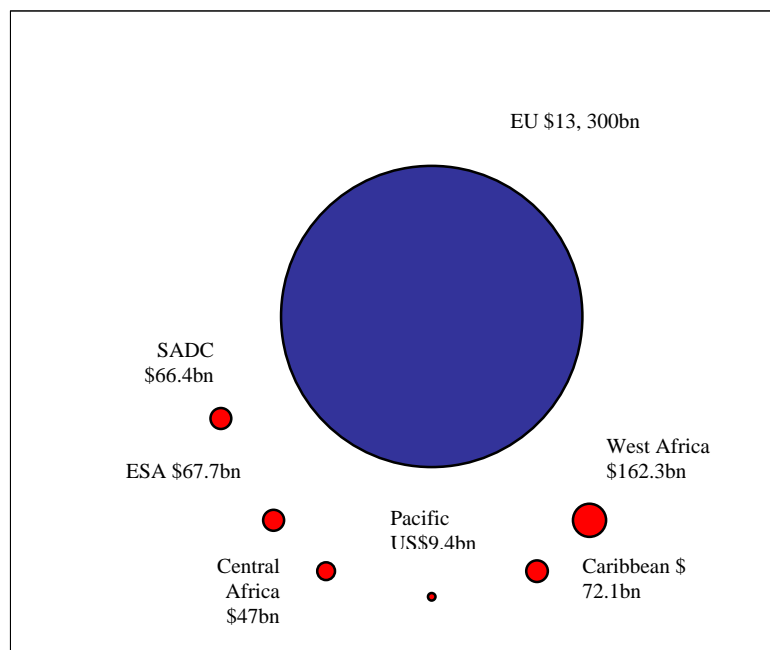
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¹⁵ "ECOWAS seeks extension of agreement with EU", http://www.bilaterals.org/article.php3?id_article=6608

Disparities In GDP

27. The EPA negotiations are being conducted between some of the world's richest countries, which have a combined GDP of US\$13,300 billion (EU at 25), and six small groups of African, Caribbean and Pacific countries, which are some of the poorest in the world. The smallest group, the Pacific Islands, has a combined GDP of only US\$9.4 billion – 1,400 times smaller than that of the EU. The relative economic power of the various negotiating groups is represented by the size of the circles in Diagram 1.1 below.

Diagram 1.1. Relative Economic Power in EPAs, GDP 2004 (US\$ billion)



Source: Calculations based on World Bank data (2005)

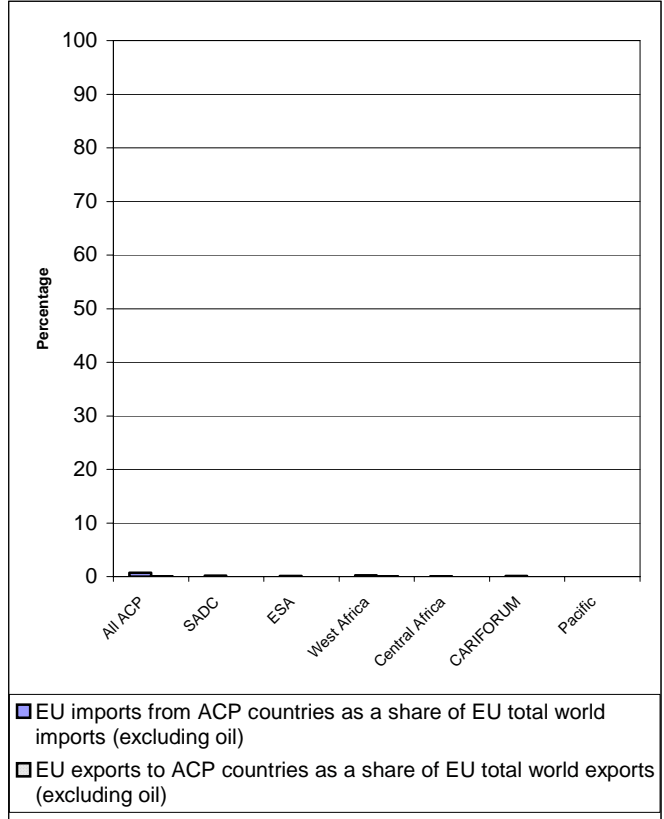
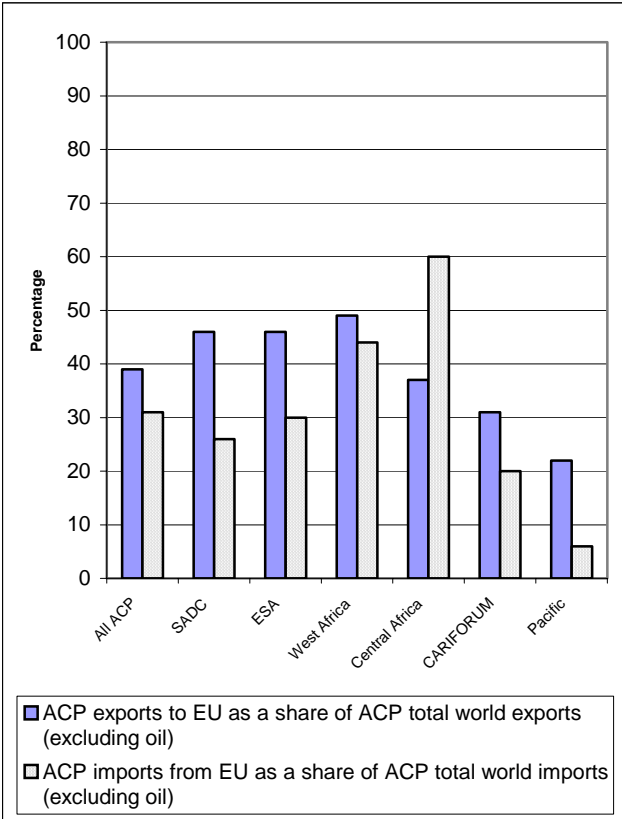
Disparities in Trade

28. If one looks at the nature of trade relations between the EU and the ACP, it is clear that far more is at stake for the ACP, than for the EU, in the EPA negotiations. Diagram 1.2 below shows that the ACP is highly dependent on the EU market. Nearly 40% of all ACP exports go to the EU – for some regions, such as West Africa this figure is close to 50%. Additionally, over 30% of all ACP imports come from the EU – for Central Africa 60% of all its imports come from the EU.

29. For the EU, on the other hand, ACP countries represent an insignificant part of their trade. As depicted in Diagram 1.3, less than 1% of EU imports come from the ACP region, and less than 1% of EU exports go to the ACP region.

Diagram 1.2 ACP trade with the EU:

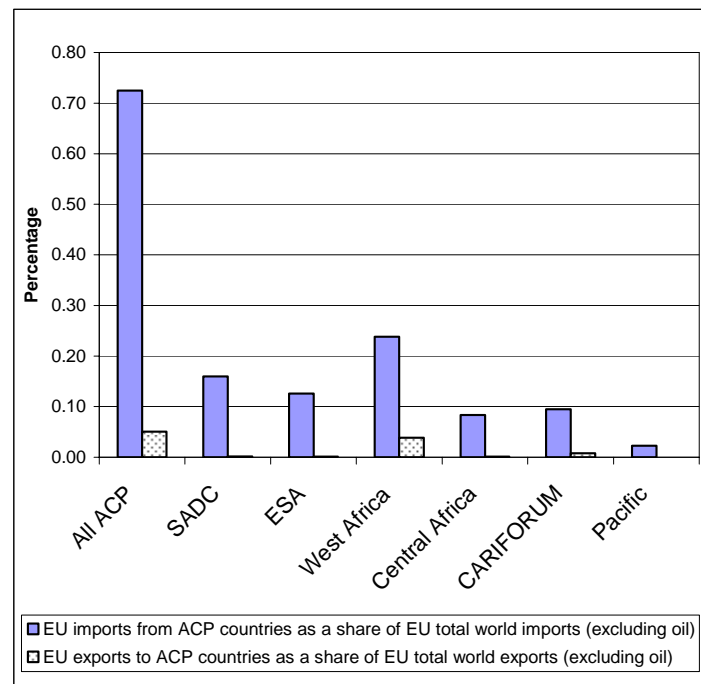
Diagram 1.3 EU trade with the ACP:



Source: 2004 COMTRADE data, available at www.trademap.org

30. It is only by magnifying the scale (i.e. by focusing on the less than 1%) that it is possible to register the share of EU imports that come from, and the share of EU exports that go to, each individual EPA negotiating group (see Diagram 1.4).

Diagram 1.4 Magnifying Small Change



Source: 2004 COMTRADE data, available at www.trademap.org

Disparities In Negotiating Capacity

31. Power asymmetries also extend to the negotiating capacity of the respective countries involved. The EU has a strong institutional structure (including the Council of Ministers and the European Parliament), a well-resourced bureaucracy in Brussels, and a team of highly skilled negotiators under the authority of the EC Trade Commission. In contrast, many of the ACP groupings lack an effective decision-making and operational structure. Where ACP regional secretariats are leading the EPA discussions (for example COMESA in the ESA Group, ECOWAS in the West Africa Group, CARIFORUM in the Caribbean Group etc.), these institutions often lack the technical and human resources to engage effectively in the negotiations. In West and Central Africa, the severe limitations of negotiating resources meant that both the draft EPA agreements for these regions were written by the EC.¹⁶

So Why Is The EC Exerting So Much Pressure?

32. The asymmetrical nature of EU-ACP trade relations has a bearing on the current EPA negotiations. ACP countries have expressed reservations about the content of EPAs, but have been reluctant to disengage from the negotiations altogether because of their economic dependence on the EU. It is clear that the

¹⁶ Interview with EC Trade Official, 19 September 2006. It was suggested that the West and Central Africa Groupings had indicated that they did not have the resources to write the draft framework agreements themselves, and preferred to “react” to an EC offer.

ACP region has a lot at stake in EPAs, but it is perhaps less apparent why the EU has been pushing aggressively for the conclusion of an FTA that goes substantially beyond the minimum requirements of a RTA under Art. XXIV. There are a number of possible answers.

33. The sheer number of ACP countries involved in the EPA negotiations is of strategic relevance to the EU in international politics; the ACP countries total 52% of the member states of the WTO and 51% of all developing countries. At the UN General Assembly they account for 41% of the seats. Forging stronger economic links between the EU and ACP may increase the leverage of the EU on the international stage. If, as looks likely at present, the majority of the world's Least Developed Countries accept 'WTO-plus' provisions in EPAs in areas such as services, competition and investment policies, it will be harder for developing countries to sustain resistance to such measures at the WTO. Similarly, the inclusion of WTO-plus measures with the ACP will set a minimum benchmark for the EU in future FTAs with larger developing countries.

34. All these factors aside, the EU is also politically sensitive to the issue of development in the ACP region. The EU has a historic relationship with the region given its colonial ties with countries in Africa, the Caribbean and the Pacific. ACP states are home to more than 10% of the world's population and the vast majority of people live in poverty. As former colonies, the EU is sensitive to the argument that it has a responsibility towards the development interests of the ACP. The EU is also concerned with the implications for its Member states of developments in the ACP countries in areas such as security, migration, etc.

CONCLUSION

35. The disparity in economic power and negotiating capacity between EU and ACP countries make the negotiation of the EPAs particularly challenging for the latter. While the negotiating mandate promises that EPAs will promote economic development and the diversification of the ACP countries and while the rhetoric is full of developmental language, the risks of EPA becoming an anti-developmental deal are real. However, EPAs also hold a large scope for concrete collaboration, assistance and positive results.

36. The complexity of the EPA process highlights the importance of building the negotiating capacity of ACP negotiators and policy makers so that they have greater ownership and influence over the outcome. It also emphasizes the importance of adopting a negotiating timeline that is respectful of the disparities in capacity of the EU and the ACP.

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South Centre Analytical Note

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