



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9.4.2002
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Recommendation for a

COUNCIL DECISION

**authorising the Commission to negotiate Economic Partnership Agreements with the
ACP countries and regions**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

In the framework of the ACP-EU Partnership Agreement, signed in Cotonou on 23 June 2000 (hereafter referred to as “Cotonou Agreement”), the Parties agreed to conclude new WTO-compatible trading arrangements, progressively removing barriers to trade between them and enhancing co-operation in all areas relevant to trade¹. To this end, Economic Partnership Agreements (hereafter referred to as “EPAs”) will be negotiated. Formal negotiations of EPAs will start in September 2002².

In accordance with the provisions of Article 37 (5) of the Cotonou Agreement, “negotiations of Economic Partnership Agreements will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group, taking into account the regional integration process within the ACP”. At the first Joint ACP-EC Ministerial Trade Committee, which met in Brussels on 14 May 2001, the ACP countries committed themselves to inform the Commission on the geographical configuration of future EPAs by November/December 2001. At the second Joint ACP-EC Ministerial Trade Committee, which met in Nairobi on 2nd October 2001, the ACP countries informed the Community that this decision may be further delayed, without questioning, however, the agreed date for the start of the negotiations.

The Commission holds the view that it is not necessary to wait for this decision, in order to proceed with the deliberations on the negotiating directives for EPAs. Although EPAs will, as a matter of principle, be established with groupings engaged in a regional integration process and, possibly, with individual ACP countries, rather than with the ACP Group of States as a whole, it remains a major objective of ACP-EC co-operation to maintain the solidarity and the unity of the ACP Group of States. The Community has therefore always considered EPAs as a dynamic process, whereby existing EPAs should be extended and merged in accordance with the progress in regional integration within the ACP. In particular, in Africa, the Community has always supported the objective of an African Union, founded on the building-blocks of sub-regional integration. The Community is also supportive of African initiatives such as the recent New Partnership for African Development (NEPAD) that make a contribution to this end. EPAs should therefore not lead to a division between existing regional integration initiatives, but instead facilitate the achievement of the wider integration objectives. Different EPAs should therefore be as similar as possible, while taking account of the specificities of the countries and regions concerned. The Commission believes that one single set of negotiating directives best serves this objective.

The Commission will, however, inform the Council of the decision by the ACP countries on the geographical configuration of future EPAs, as soon as this decision is available, together with its view on the choices made and actions it intends to take to support them.

¹ Article 36 (1) of the Cotonou Agreement

² Article 37 (1) of the Cotonou Agreement

2. THE FOUNDATIONS

The Cotonou Agreement is a comprehensive Partnership Agreement between the ACP States and the EU. It builds on three interlinked pillars: the political dimension, economic and trade co-operation and development finance co-operation. EPAs are defined by the Cotonou Agreement as the major instrument of economic and trade co-operation. However, while the political dimension as well as the development finance co-operation and even the objectives and principles applicable to EPAs have been defined in detail by the Cotonou Agreement itself, the actual negotiations of EPAs have been postponed and a longer period for the negotiations of EPAs has been provided for to allow the ACP countries to prepare themselves adequately for the new trading arrangements. Despite their independent legal standing EPAs thus remain an integral part of the Cotonou approach. They are therefore subject to the objectives of the Cotonou Agreement and must contribute to the achievement of these objectives.

2.1. The political dimension

The primary objective of the Cotonou Agreement is “to promote and expedite the economic, cultural and social development of the ACP States, with a view to contributing to peace and security and to promoting a stable and democratic environment”³. The respect of human rights, democratic principles and the rule of law constitute essential elements of the Partnership Agreement. Good governance constitutes a fundamental element of this Agreement⁴. EPAs need to be placed in this context.

2.2. The development dimension of EPAs

The Partnership established by the Cotonou Agreement is “centred on the objective of reducing and eventually eradicating poverty, consistent with sustainable development and the gradual integration of ACP countries into the world economy”⁵. EPAs must serve this objective. They are therefore above all an **instrument for development**.

This is underlined by the provisions of Article 34 (1) of the Cotonou Agreement, which state: “Economic and trade co-operation shall aim at fostering the smooth and gradual integration of ACP States into the world economy, with due regard to their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries”.

EPAs are designed for that purpose: by establishing a stable, predictable and transparent framework for economic and trade relations between the ACP countries and the EU, EPAs are intended to mobilise economic operators at local, national, regional and international levels and to promote local economic activity and attract regional and international investments. By removing border measures to trade between the parties as well as other factors causing market segmentation, they will enlarge the markets of ACP countries, which will allow for economies of scale, will improve the level of specialisation, will increase competitiveness of the ACP States and will help attract investment. This, in turn, will lead to an increase in trade

³ Article 1 (1) of the Cotonou Agreement

⁴ Article 9 of the Cotonou Agreement

⁵ Article 1 (2) of the Cotonou Agreement

flows in the region, with the Community and with the rest of the world, thereby promoting the sustainable economic and social development of the ACP countries.

However, EPAs will also require difficult economic and social adjustments. In order to maximise the benefits of EPAs, it is therefore essential that EPA negotiations and implementation be accompanied by appropriate flanking policies of the ACP and that appropriate EU support measures are included in regular EDF financing. EPAs will set a trade policy framework which will need to be complemented by development policies in areas such as regional integration, macroeconomic and social policies, environmental policies, good governance (e.g. administrative and legal reforms), supply-side measures (e.g. private sector support, infrastructure development), sectoral programmes (e.g. agriculture, education, health), fiscal reforms and assistance in trade-related areas such as customs administration, investment, competition policies and standards. Article 18 of the Cotonou Agreement underlines this need by stating: “The co-operation strategies shall be based on development strategies and economic and trade co-operation which are interlinked and complementary. The Parties shall ensure that the efforts undertaken in both aforementioned areas are mutually reinforcing”.

EPAs will ultimately complete the comprehensive approach designed by the Cotonou Agreement, setting in force a powerful combination of political, trade and development co-operation to promote the sustainable development of the ACP countries and to contribute to poverty eradication in these countries.

3. THE CONTENT OF EPAS

In accordance with the provisions of Article 36 (1) of the Cotonou Agreement, EPAs shall be directed at “removing progressively barriers to trade between the Parties and at enhancing co-operation in all areas relevant to trade”. They therefore aim ultimately at fostering economic integration between the Parties.

The primary building block for EPAs is the establishment of free trade areas, progressively eliminating tariffs and non-tariff barriers, such as quotas and measures having equivalent effect, on substantially all trade between the parties.

In this context and in order to increase economic efficiency, EPAs should also aim at simplifying the requirements and procedures related to imports and exports, based on the highest international standards. Notably, EPAs should aim at identifying constraints and introducing improvements in import licensing, customs valuation, pre-shipment inspection, transit rules and other issues with a view to ensuring the transparent and harmonised application of these instruments.

EPAs should not only extend to trade in goods, but also to trade in services. Indeed, the importance of trade in services in world trade is increasing and there are examples of sectors where ACP countries have a comparative advantage. Services are therefore a potential source of growth for the ACP. In addition, the service sector is becoming an increasingly important input for trade in goods and therefore, a key determinant for the competitiveness of the ACP. Liberalisation of services will act as a spur to domestic reform, encouraging more efficient, varied and competitive markets at home and so significantly contribute to increasing the competitiveness of the ACP⁶.

⁶ As regards audiovisual services, the negotiations will be conducted with a view to ensure that the Community and its Member States maintain the possibility to preserve and develop their capacity to

The mere removal of tariffs will not be sufficient to fully achieve the objectives of economic and trade co-operation. In particular, the potential gains from trade liberalisation will not be fully realised unless other factors causing segmentation of markets are removed. This is precisely why the Cotonou Agreement has defined enhanced co-operation in all areas relevant to trade as the second pillar of EPAs. Co-operation in these areas should be as comprehensive and as extensive as possible and address all issues that may have a bearing on the achievement of the objectives of EPAs. Most of these areas as well as, in certain cases, the results to be achieved, have already been defined by the Cotonou Agreement itself⁷. However, this should not prevent the Parties from extending co-operation in trade-related areas beyond these definitions, if this maximises the benefits of EPAs.

4. GUIDING PRINCIPLES FOR THE ESTABLISHMENT OF EPAS

The Cotonou Agreement has itself defined several guiding principles for the negotiation of EPAs. Other principles derive from the development dimension of EPAs.

4.1. EPAs as a tool for development

EPAs are designed to promote the sustainable development of the ACP countries and to promote the eradication of poverty in these countries and not primarily to achieve WTO compatibility of ACP EC trade relations. Therefore, while WTO rules need to be safeguarded, negotiations of EPAs must also take account of the level of development of the parties, the particular economic, social and environmental constraints the ACP countries are facing and their capacity to adapt and to adjust their economies to the new trading arrangements.

This is already required by Article 37 (7) of the Cotonou Agreement which provides that “on the Community side, trade liberalisation shall build on the *acquis* and shall aim at improving current market access”. However, with regard to ACP countries, “negotiations shall take account of the level of development and the socio-economic impact of trade measures on ACP countries, and their capacity to adapt and to adjust their economies to the liberalisation process”. As a consequence, “negotiations will therefore be as flexible as possible in establishing the duration of a sufficient transitional period, in the final product coverage, taking into account sensitive sectors, and the degree of asymmetry in terms of the timetable for tariff dismantling, while remaining in conformity with WTO rules”.

The Commission therefore believes that the Community should further improve current access to its market for products originating in the ACP countries. Indeed, 93 % by value of ACP exports to the Community enter already the Community market duty and quota free. In addition, 40 out of the 77 ACP countries enjoy already duty and quota free access for all products on the basis of the recent initiative in favour of the LDCs (“Everything but Arms”).

The Commission considers that trade liberalisation in favour of developing countries should be part of a new North-South partnership according to which these countries apply the appropriate policies. In that respect, further opening of the EU market will be closely related to progress made in regional integration, as a tool for improving the internal policies. Further improved market access for the benefit of non-LDC ACP countries will contribute to maintaining the unity and solidarity of the ACP and to consolidating regional integration

define and implement their cultural and audiovisual policies for the purpose of preserving their cultural diversity.

⁷ Articles 41 to 51 of the Cotonou Agreement

within the ACP; it will offer new opportunities to non-LDC ACP countries, with a view to promoting the diversification of their economies.

As far as the ACP countries are concerned, trade liberalisation vis-à-vis the Community should be undertaken with the maximum degree of flexibility available. Therefore, while a period of 10 years for tariff dismantling would be the normal rule, the Community should be prepared to accept that this period will be exceeded, where this is required by economic and social constraints of the countries concerned. Appropriate flexibility should also be applied in relation to product coverage and the calendar/rhythm of liberalisation commitments by the EPA partners. "Backloading" of implementation commitments and any product exclusions from liberalisation should reflect the specific constraints and sensitivities of the partner countries concerned.

With regard to trade in services, a similar degree of flexibility should be applied "in accordance with the provisions of GATS and particularly those relating to the participation of developing countries in liberalisation agreements"⁸. The Community should also be prepared to further postpone the start of negotiations in this area, where this is effectively required by specific constraints which the ACP countries concerned are facing. The Commission therefore considers it essential, however in cases where the start of reciprocal trade liberalisation is postponed, to provide for an appropriate monitoring mechanism to assess regularly the progress made. Furthermore, it should be ensured that during this additional preparatory period, appropriate development support is provided in the framework of the national and/or regional indicative programmes.

Finally, the Commission holds the view that similar approach should be followed with regard to co-operation in trade-related areas. Therefore, subject to the commitments already undertaken in the framework of the Cotonou Agreement, it may be appropriate, in specific areas, to agree primarily on the ultimate results to be achieved, while applying a high degree of flexibility in the definition of the process leading to these results. In these cases the Commission considers equally essential to provide for the establishment of the appropriate institutions, which will monitor the process, and to ensure that adequate development support is given in the framework of the national or regional programmes.

The Commission believes that this highly flexible approach which takes into account the economic and social constraints of the ACP countries as well as their adjustment capacity is key to the achievement of the Cotonou objectives. It will be equally essential that this approach be complemented by appropriate development strategies in ACP countries and development support by the Community.

4.2. WTO compatibility

EPAs must be compatible with the provisions of the WTO. This is a basic prerequisite of EPAs themselves, without which the objectives of economic and trade co-operation of the Cotonou Agreement cannot be achieved. It is therefore also explicitly underlined by all relevant provisions of the Cotonou Agreement.

For instance, Article 34 (4): "economic and trade co-operation shall be implemented in full conformity with the provisions of WTO" or Article 36 (1): "the Parties agree to conclude new WTO compatible trading arrangements".

Liberalisation of trade in goods must therefore be undertaken, in particular, in conformity with the provisions of Article XXIV of the GATT 1994 while making appropriate use of the

⁸ Article 41 (4) of the Cotonou Agreement

flexibility available within the framework of that provision⁹. Liberalisation of trade in services must be undertaken “in accordance with the provisions of GATS and particularly those relating to the participation of developing countries in liberalisation agreements¹⁰”. The results of the negotiations on WTO provisions applying to regional trade agreements, which form part of the WTO Doha Development Agenda, will need to be taken fully into account.

Similarly, in all trade-related areas, EPAs must build on the *acquis* of the relevant multilateral trade rules and can only be developed in accordance with these rules.

As a general rule, including in those areas that are not yet covered by multilateral trade rules but are subject of multilateral trade negotiations under the Doha Development Agenda, negotiations of EPAs shall take account of these negotiations, so as to ensure full coherence with future multilateral rules.

In a wider sense the strengthening of capacities in the context of EPA negotiations will also enhance the ability of the ACP countries to participate actively in WTO negotiations and to implement their WTO commitments.

4.3. Regional integration

Fostering regional integration is one of the major objectives of ACP-EU Partnership. Indeed, in accordance with Article 1 (4) of the Cotonou Agreement, “regional and subregional integration processes which foster the integration of the ACP countries into the world economy in terms of trade and private investment shall be supported and encouraged”. Furthermore, Art. 2 of the Cotonou Agreement defines regionalisation as one of the fundamental principles of ACP-EC co-operation.

Accordingly, Article 35 (2) of the Cotonou Agreement states that “economic and trade co-operation 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”. In addition, Article 37 (5) of the Cotonou Agreement provides that “negotiations of economic partnership agreements will be undertaken ... taking into account the regional integration process within the ACP”.

In effect, the drive for economic growth cannot be strictly based on the domestic market and savings given the size of national markets and the limited per capita income. Recent progress in regional integration clearly indicates that the ACP have independently chosen to base their integration into the world economy on the intermediate step of regional economic integration. The growth generated by the establishment of adequate national policies is much stronger if similar measures are simultaneously taken by neighbouring countries. In this way, regional economic integration contributes to a greater convergence, to better export opportunities, to regional economic stability and has a knock-on effect on growth (by access to larger markets and by economies of scale), which is an important factor for poverty reduction. Moreover, greater access to regional markets increases the potential to attract investment, including FDI.

EPA negotiations should therefore build on the *acquis* of regional integration in order to maximise the benefits of EPAs. They should further contribute to consolidating and deepening the regional integration process, while taking account of the different levels of development of the ACP countries concerned as well as of the different intensity of integration that may exist within the region. The ACP countries should therefore undertake at

⁹ Articles 37 (7 and 8) of the Cotonou Agreement

¹⁰ Article 41 (4) of the Cotonou Agreement

least to automatically extend the treatment granted to the Community to all other ACP members of the EPA concerned preferably ahead of trade liberalisation vis-à-vis the Community.

4.4. Differentiation

In accordance with Article 2 of the Cotonou Agreement, differentiation constitutes one of the fundamental principles of ACP-EC co-operation. In addition, Article 35 (3) of the Cotonou Agreement confirms that “economic and trade co-operation shall take account of the different needs and levels of development of ACP countries and regions, having particular regard to the specific situation of the least developed countries”.

It has sometimes been understood that the principle of differentiation implies that reciprocity would not be required from least developed countries (LDCs), participating in an EPA. This is, of course, not the case. Reciprocity is one of the basic elements of EPAs from which no partner wishing to participate can be excepted without depriving EPAs of their essence.

In reality, the principle of differentiation calls more generally for special treatment for the LDCs and therefore opens the way to negotiate EPAs taking account of the particular constraints and adaptation capacity of the LDC Members. It therefore allows, for instance, for the negotiation of agreements which fix the objective of creating an EPA, establish common or harmonised rules and disciplines in all areas relevant for trade, and define plans and schedules for reciprocal tariff dismantling, while providing for a delayed start or a slower pace of tariff dismantling by the LDCs. Such adjustments would need to be compatible with the WTO-rules, in particular Article XXIV of GATT, that prevail at the time.

To what extent, and in what way, such variable speed should be applied within any given regional grouping will depend on the progress and the intensity of integration in this grouping, as well as on the impact of differentiation on the cohesion of this grouping. This can, therefore, only be decided on a case by case basis. However, it is clear that the principle of differentiation should lead to the negotiation of EPAs which take into consideration any variable speed which exists within the regional ACP groupings.

5. CONCLUSIONS

EPAs are designed by the Cotonou Agreement to be a major instrument to establish “a true, strengthened and strategic partnership”¹¹ between ACP States and the EU. Their primary objective is to foster “the smooth and gradual integration of the ACP States into the world economy, with due regard for their political choices and development priorities, thereby promoting their sustainable development and contributing to poverty eradication in the ACP countries”¹². EPAs are thereby above all an instrument for development. They are at the same time a major contribution to the achievement of the primary objective of the Cotonou Agreement “to promote and expedite the economic, cultural and social development of the ACP States, with a view to contributing to peace and security and to promote a stable and democratic political environment”¹³.

EPAs can only play this role if appropriate account is taken of the particular economic and social constraints of the ACP countries as well as of their adaptation capacity, of whether they are effectively combined with appropriate development strategies, and of whether they are

¹¹ Article 35 (1) of the Cotonou Agreement

¹² Article 34 (1) of the Cotonou Agreement

¹³ Article 1 (1) of the Cotonou Agreement

fully integrated into the overall ACP-EU co-operation. This implies, in particular, that EPAs are established in full conformity with the objectives and principles of development co-operation, while being compatible with the provisions of the WTO. It also implies the need for a comprehensive approach within ACP – EU co-operation and for all measures undertaken within this framework to be mutually supportive. The negotiating directives presented by the Commission aim at achieving this objective.

In aiming at establishing a “true, strengthened and strategic partnership” between the ACP States and the EU, EPAs are also part of a long term process. The negotiation of EPAs will only be the first step in this process.

The second step will be the implementation of EPAs. EPAs will introduce a new dimension in ACP-EC economic and trade co-operation. They will require adjustments of the ACP States’ economies and will require appropriate flanking policies. EPAs should provide for an appropriate mechanism, compatible with WTO provisions, to ensure that the negotiated implementation timetable for trade liberalisation commitments by ACP countries can be modulated by agreement, where this is justified in the light of economic conditions in the ACP country concerned. Furthermore, the ACP States and the Community must ensure that the appropriate development strategies are in place to facilitate the necessary economic and social and environmental adjustment as well as the required flanking policies, promoting thereby the sustainable development in the ACP States. In order to better fulfil these objectives, the Community will initiate sustainability impact assessments prior to the start of negotiations. These assessments will aim at bringing a better understanding of trade, development and environment linkages and identifying the best policy mix.

However, the stages of negotiating, and subsequently implementing, EPAs will not mark the end of the ACP-EU economic partnership. This is not static but should constantly be adapted to respond to the challenges and opportunities of globalisation, to follow the progress of regional ACP integration and to take into account evolution of international and multilateral rules. EPAs must be prepared for such developments. They should therefore provide the appropriate rules to allow for their adaptation, and in particular to extend and to merge existing EPAs in line with progress in regional integration within the ACP.

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In the light of the above, the Commission recommends:

- that the Council authorise the Commission to negotiation Economic Partnership Agreements with ACP countries and regions;
- that since in accordance with the Treaty, the Commission will conduct these negotiations on behalf of the European Community, the Council appoint a special committee to assist it in this task; and
- that the Council issue the appended negotiating directives.