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*Date :* **26 October 2006**

## **BRIEF ON ECONOMIC PARTNERSHIP AGREEMENTS**

**JOINTLY PREPARED BY  
THE COMMISSION OF THE AFRICAN UNION, AND  
THE ECONOMIC COMMISSION FOR AFRICA**

1. This brief has three parts. Part 1 provides a simple background to negotiations on Economic Partnership Agreements (EPAs). Part 2 then sets out key issues in EPA negotiations. Part 3 contains recommendations for the way forward.

## **Part 1           Background**

### *The idea of EPA negotiations*

2. Economic Partnership Agreements (EPAs) are being negotiated by the European Commission on behalf of the European Union, with six groups of African Caribbean and Pacific countries. Four of the groups are African countries. The two other groups are the Caribbean and the Pacific regions. EPA negotiations started in 2002 and are due to be concluded by 31 December 2007. It is envisaged that the EPAs will enter into force on 1 January 2008.

3. This date of 1 January 2008 is when the ACP-EU trade relations are supposed to start being based on arrangements that do not need waivers or derogations from the rules of the World Trade Organisation (WTO). Trade relations between the ACP and EU, under the Lome Conventions from 1975 up until now, have mostly been covered by waivers or derogations from WTO rules, but it is felt by the EU that the international economic order has changed and requires trade arrangements that comply with WTO rules.

4. It is the understanding of the EU that compatibility with WTO rules requires reciprocity; each party should liberalise its trade with the other party in a manner that the final agreement is compatible with Article 24 of GATT. In practical terms, regarding customs duties for instance, this means that the ACP countries, including African countries, should reduce their customs duties on almost all imports from the EU to zero. Under the EU's interpretation of Article 24 of GATT, this means African countries would be required to reduce their customs duties to zero on, at a minimum, 80% of their imports from the EU. Under the Lome conventions, with the waivers, ACP countries were not required to eliminate customs duties on their imports from the EU.

5. Most ACP countries have continuously resisted the idea of reciprocity. There has been a very strong basis for this position. The evidence of impact assessment studies undertaken at national, regional and continental level by the Economic Commission for Africa has indicated that this approach would result in serious adverse consequences, such as job losses, closure of industries or de-industrialisation, loss of revenue, and would disorganise the economic integration process underway in the ACP regions. These findings have been corroborated by other independent studies carried out by research organisations and even impact assessments that some countries have undertaken.

### *The negotiating groups of Africa*

6. The four negotiating groups of Africa are the following: SADC, ESA/ COMESA, CEMAC, and ECOWAS/ UEMOA. It should immediately be pointed out that the membership in these EPA negotiating groups is not exactly the same as the membership of the regional economic communities known by these names.

7. The SADC EPA group is not made up of all member states of the regional economic community called SADC. The SADC EPA group is made up of Botswana, Namibia, Lesotho, Swaziland (BNLS); as well as Mozambique, Angola, and Tanzania (MAT) – sometimes referred to as BNLS and MAT countries. (BNLS are in the SACU together with South Africa, while MAT countries are LDCs.) South Africa participates in the SADC EPA group as an observer. Other member states of SADC are in the COMESA EPA group, which is known as the Eastern and Southern Africa group (the ESA group). These SADC members that are also in COMESA and have joined the ESA Group include Malawi, Mauritius, Madagascar, Zambia, and Zimbabwe. It can be pointed out that Congo DRC has recently joined the CEMAC EPA group; it is a member also of the SADC and COMESA regional economic communities.

8. At the same time, some members of COMESA are not negotiating the EPAs; namely, Egypt and Libya. Egypt already has an association agreement with the EU – under the Euro-med agreements between countries around the Mediterranean and the EU – under which a free trade area is to be gradually formed between Egypt and the EU. The other countries of North Africa also have association agreements with the EU.

9. The existence of an FTA between South Africa and the EU and one between Egypt and the EU raises serious issues if SADC and ESA EPAs are to be based on a customs union approach. The level of flexibility in the South African FTA with Europe is more limited than what the LDC countries negotiating under SADC would expect. In the same vein, the sensitive products identified by Egypt in its FTA are also likely to have consequences on the structure of the common external tariff that ESA countries present in their EPA with the EU. This highlights the important issue of how the EPA configurations will affect the integration agenda of Africa.

10. In Central Africa, CEMAC rather than ECCAS is the negotiating group. The Banjul Summit Decision on RECs designated ECCAS as the regional economic community for Central Africa. In this regard, there could be merit in considering much closer unity between CEMAC and ECCAS in the context of regional integration in Africa and the EPAs. The CEMAC group is entering a free trade area with Sao Tome and Principe in order to include this country in the CEMAC negotiating group.

11. In West Africa, UEMOA and ECOWAS – ECOWAS being the regional economic community that the Banjul Summit designated for West Africa – have formed the ECOWAS EPA group. The ECOWAS secretariat/ commission

services the EPA negotiations but UEMOA also participates. The ECOWAS regional economic community has agreed to work towards adopting the UEMOA common external tariff, so that the two communities can negotiate the EPA from a common stand point on customs duties. There is merit also for ECOWAS and UEMOA to consider their much closer unity.

## **Part 2 Key issues in EPA negotiations**

### *Regional integration*

12. Against this background, it is clear that the EPA negotiating groups constitute parallel institutions and arrangements to the recognised regional economic communities, which are the building blocs for the African Common Market and Economic Community.

13. The four negotiating groups of Africa do not invite each other to their EPA negotiations and related events. Thus, the EU is talking to all the African negotiating groups, but the groups are not talking to each other.

14. The groups are proceeding at different speeds in the negotiations. The ESA group has already produced a draft EPA on which it has engaged in text-based negotiations with the EU, during the last week of September 2006 in Mombasa Kenya. The CEMAC and ECOWAS groups have at this stage produced outlines or structures of the EPA on which they are still working. The SADC group has proposed to use the Trade and Development Cooperation Agreement, an agreement concluded between South Africa and the EU, as the template for the SADC EPA with the EU.

15. The groups are not negotiating on the basis of a joint or common negotiating mandate and road map. Each group separately prepared its negotiating mandate. And each group separately launched negotiations with the EU, on the basis of a road map jointly agreed between the EU and the particular group.

16. However, regarding negotiating mandates, there are various areas that are common to all the groups. These areas include prioritisation of, regional integration, development, financing to address supply side and infrastructure constraints, market access, and health and technical standards. Regarding the road maps, all the groups aim to complete EPA negotiations by 31 December 2007, in accordance with the time frame set at the all ACP level. And regarding the negotiating structures, the negotiations take place at the ministerial and ambassadorial levels, and are supported by technical teams. These similarities, as well as the overarching continental process of economic integration, support the view that there is merit in coordination among the four negotiating groups, and in attempting as much harmonisation as possible in any EPAs to be concluded.

17. The better alternative would have been an all Africa EPA with the EU, based on the African Common Market. The continental study by the ECA looked at this

scenario which assumed that the intra-African trade barriers would be eliminated first before tariff phase-down in favour of the EU. Given that the African regions are undertaking EPA negotiations as separate groups, there are two important fallback positions in order for regional integration objectives to be achieved. First, the process of removing the inter-RECs barriers and building trade-facilitating mechanisms should be fast-tracked. Second, the negotiating groupings should ensure as much harmony as possible among any EPAs to be concluded, including in structure and wording, rights and obligations.

18. Unless measures are put in place to address the status quo, the EPAs will pose a serious threat to regional integration in Africa. Findings from ECA research indicate that EPAs could result in a reduction in intra-Africa trade of up to 18 percent. The EU is likely to prefer the EPA configurations, and might press Africa to adopt these configurations in the rationalisation of the multiple memberships that characterises the eight RECs that have been recognised by the African Union under the Banjul Decision on a Moratorium on RECs adopted on 2 July 2006. The implication of choosing EPA configurations over the RECs, unless the time frames of the EPAs are streamlined with the RECs integration roadmaps, could well undermine the RECs, since the EU is an important and influential partner in the areas of trade, development and finance, and peace and security.

19. The EU might be working on the assumption that the EPA negotiating groups should each adopt a common external tariff by 1 January 2008. However, adoption of common external tariffs by that date is inconsistent with the time frames set by some of the RECs. Further, adoption of common external tariffs by each of the negotiating groups would amount to a de facto re-configuration of the RECs and their membership. This could well disrupt the process of economic integration under the Treaty establishing the African Economic Community and the Sirte Declaration, as well as political integration under the Constitutive Act of the African Union, through prioritising EPA programmes and activities over the African Union programmes for political and economic integration in accordance with the applicable instruments and decisions of the African Union and the regional economic communities. The joint AU-ECA study *Assessing Regional Integration in Africa II (ARIA)* confirmed from its survey the widely held view that as a result of strategic national interests, membership in the regional economic communities is a critical sovereign decision of a country.

20. The African Union has adopted economic integration as the overarching development strategy of the continent; and back in 1991, concluded the Treaty for the Establishment of the African Economic Community that entered in force on 12 May 1994. The regional economic communities of Africa are the building blocs for the African Economic Community as stated in the Treaty and as stated in the treaties of the regional economic communities. Considerable progress has been made over the years. Recently at the Banjul Summit held on 2 July 2006, the African Union adopted a moratorium on establishment of further regional economic communities, and recognized eight that are currently in place. The

Heads of State and Government institutionalized the conference of ministers responsible for economic integration; and requested the Commission of the African Union to prepare proposals on further addressing the question of economic integration in Africa.

21. While it is evident that there is still work to be done, it is not helpful and appropriate, within the context of EPAs negotiations, for the EU to argue that the African Union and the regional economic communities are not doing enough to address the question of economic integration; and that the proposed measures are not clear. In the same context, regional economic integration cannot be a substitute for development measures aimed at assisting the ACP region.

22. It is worth recalling that the African Ministers of Trade in two successive Ministerial Meetings have expressed the need for the negotiations not to approach the question of regional economic integration in Africa in a narrow manner. Regional integration should not be considered to be mainly about establishment of a common external tariff, on the basis of reductions to customs duties on imports from the EU. Rather, regional integration in Africa is mainly about building and strengthening the regional markets through a variety of measures to promote, trade facilitation, transport facilitation, building a sound technological base, harmonization of industrial, technical and health standards, and other such regional programmes.

#### *Coordination among the negotiating groups*

23. The African Union member states have agreed that there should be coordination among the various negotiating groups. The coordination can assist in promoting harmony in positions taken by the various groups, and this is necessary to support the economic integration processes in Africa and avoid conflicts that could constitute barriers to formation of the African Common Market. It can assist also to ensure progress at the same speed as much as could be feasible. This is important in order for some regions not to lag behind; or to be far ahead of the others in a manner that again could adversely affect progress with economic integration in Africa.

24. The African Union Commission is not a negotiating party in the negotiations. The role of the Commission is to coordinate the negotiations in accordance with the mandate from the Heads of State and Government of the African Union. In most cases, the African Union Commission is not present in the actual negotiating meetings. The result is that, the EC side talks to all the negotiating groups, directly in the negotiations, while the Commission of the African Union does not have the same opportunity. In this regard, it could be helpful for the EC and the African Union Commission to work more closely to assist the coordination process. There may be merit in ensuring that the African Union Commission participates in the actual negotiating meetings, not only for purposes of coordination but also as advisor to the negotiating groups.

25. Since the EU is also interested in deepening Africa's integration, in negotiating with the various groups, it would be helpful not to put them in competition but rather reinforce coordination with one another. On the part of Africa ACP negotiating groups, just as each of the groups is happy to share information with the EU, so should they also share with the other negotiating groups. The Groups should invite each other to their events and negotiations with the EU especially at this current phase of the negotiations.

26. Regarding the preparation of the text for the EPAs for the various groups, it could be helpful for the language to be similar in areas that are common to all the negotiating groups. This would be helpful for interpretation and meaning, and for implementation subsequently in the context of economic integration in Africa.

27. There is justification for the current concern about each of the various negotiating groups proceeding on its own, without consulting the others. The ESA group has already produced its draft EPA and engaged in direct text-based negotiations with the EU. The other groups are still preparing outlines for the EPA. In the case of SADC, a proposal has been made to use the current Trade and Development Cooperation Agreement between South Africa and EU as the template for the EPA. This discordance in progress and approach among the negotiating groups, is not only worrying but poses the threat that each of the groups could end up signing an EPA with the EU which is different from the others. This would complicate the process of economic integration in Africa, if the different member states end up locked into obligations with the EU of an indefinite duration that are inconsistent with the programmes for building the African Common Market.

28. There is the inherent contradiction that building free trade areas between the EU and each of the negotiating groups – where the negotiating groups liberalise their trade with the EU and charge zero-rated customs duties to substantially all imports from the EU – is inconsistent with having the African Common Market where African countries adopt a continental common external tariff against all imports into Africa from the rest of the world. This is so because the African common external tariff is unlikely to be zero-rated for all products. Similarly, the common external tariffs of the RECs are unlikely to be zero-rated for all products. This means that the EU will *de facto* be part of the African Common Market, as it will have a special arrangement with the African Common Market for better treatment than other third countries that export to Africa. Yet, the EU fought the idea of an All-Africa EPA, and in the initial stages pressed some regions to agree to negotiate as separate groups, rather than as Africa.

29. A related issue is that under the Euro-Med Agreements, free trade areas will be gradually established between, most of the North African countries that are members of the African Union, and the EU. Such free trade areas would similarly have implications for the regional economic communities of Africa that the North African countries belong to, namely, COMESA, CENSAD and AMU; and would equally have implications for building the African Common market.

## *Development*

30. The development content of the EPA negotiations to date remains an area of major divergence between the EU and the different negotiating sub-regions. Yet EPAs are supposed to be development tools, as required in the Cotonou Partnership Agreement. Positions on development content should be forward looking. As clearly set out by the African Union Trade Ministers in the Nairobi Declaration on EPAs, of 14 April 2006, development requires: the fullest market access without the prevalent non-tariff barriers in order to promote trade, adequate technical assistance and resources to assist build competitiveness and address supply side constraints, adequate policy space to undertake programmes for addressing key concerns such as the protection of public health and alleviation of rural poverty and protection of important domestic industries. The aims of development programmes should include the attainment of the MDGs, including the eradication of poverty. The immediate programmes should squarely build the competitiveness necessary for global competition and address infrastructure and trade-related constraints. This understanding of development must mean that action will be required on various fronts: trade, financial assistance, technology transfer and training, flexibility in the rules to take into account the development needs of ACP countries, and avoiding of rules in areas where public policy objectives would be compromised.

## *Additional resources*

31. While resources agreed for EDF 10 are substantial, about 22 billion, there is wide agreement that they fall far short of amounts required by ACP countries. In the ESA region, for instance, the resources are only half of what is required after considerable prioritization. It is therefore important for negotiations with the EC to continue with a view to changing its position that only EDF resources will be committed. The experience from the FTA arrangements between the EU and North African countries has showed that significant focused but also broad-based adjustment support is necessary at implementation stage of agreements such as that anticipated under EPAs. Therefore, an adjustment facility is indispensable if the EPAs are to help African countries strengthen and build their competitiveness that would help them fully develop and utilise the regional markets.

32. The case for an EPA adjustment facility is even stronger, considering that the EPA would be for a period of unlimited duration, while EDF resources run in short cycles, with EDF 10 due to end in 2013. While the EC position that additional resources should be mobilised jointly with the ACP groups from other donors, including international financial institutions, could be a direct link to the Aid for Trade initiative, unless this is clarified, it would not be reasonable to have EPAs adopted on the basis of on unknown resources from other donors in a legal arrangement that imposes obligations on ACP countries. It is for this reason that the ACP side has proposed establishment of an EPA facility that would have timeframes that match the EPA rather than the time frames of the EDF; resources would have to be separately made available under the EPA facility,

including under the Aid for Trade Initiative. The obvious justification for Aid for Trade is that market openings, without doubt, are not the panacea for making trade play its role in economic development. In order for developing countries to use the market openings, they need resources to build their production capacity, address supply side constraints, and infrastructure and trade-related constraints – all of which otherwise cause low levels of production and result in uncompetitive products that are relatively highly priced and might not meet certain standards in regional and global markets.

33. The Conclusions of the European Council and the Representatives of the Governments of the Member States Meeting within the Council on Aid for Trade, of 16 October 2006, are therefore welcome. The European Commission should be expected to accordingly abide by them in negotiations with the ACP groups. In particular, the EC should tone down its adamant position that there will be no additionality of resources and should be receptive to ACP proposals on additional resources and the operationalisation of Aid for Trade.

#### *Procedures and modalities*

34. While stressing the importance of an EPA Adjustment Facility, it should be pointed out that EDF procedures are cumbersome and lengthy. Experience has shown that it may sometimes take over 6 years for the resources to be on the ground. Thus, within the context of EPAs, proposals for revising the procedures have been made, including by the ACP regions. These proposals still need to be pursued as the committed EDF resources will be useful for positive outcomes from implementation of EPAs. The ACP countries have expressed preference for using their local institutions as the vehicles for the resources. These include regional banks and funds located in the regions of the negotiating groups and owned by the member states of the groups. COMESA, for instance, has established the COMESA Fund – with an infrastructure window and a budget support window. COMESA has proposed that the EU should disburse funds to this Fund to support regional integration in the region and the building of competitiveness in the region, and in response the EU has made some initial commitments. These regional vehicles would be the better approach, and would additionally assist in mobilization of extra resources.

#### *Binding or non-obligatory undertakings by the EU*

35. The EU has insisted that it cannot make binding commitments that would be written into the EPAs, on providing resources to the ACP countries. The EU prefers non-binding provisions, and has stated in the negotiations that it is already committed to provide resources in a sustainable manner. The ACP regions, on the other hand, have argued strongly that to promote stability and predictability and to assist long term planning and development, the EU should make binding commitments in the EPAs just as the ACP countries would also be making binding commitments.

36. The adjustment concerns raised by the assessments of the possible impacts of the EPAs to Africa suggest that the EU should provide commensurate resources through binding commitments. The commitments should match the quantity and quality of reforms required and implementation requirements; and should assist fully in the building of the competitiveness of industries and economies of Africa. Africa will be entering binding obligations; these should be in exchange for binding commitments by the EU. Moreover, as Africa will also be entering into obligations of unlimited duration, this should not be in exchange of EU commitments of very limited duration under EDF cycles. If Africa is to make major concessions to the EU, then it is important that the EU support the reform and adjustment process and the expectation should not be that Africa should seek additional funds from other donors.

*Quota free duty free market access for LDCs*

37. Barriers to market access in Europe include tariffs and non-tariff barriers. The tariffs are problematic especially when they escalate; i.e., rising rapidly according to stages of processes. They are problematic also when they are extremely high – tariff peaks. This is why initiatives to grant duty free market access to LDCs for all products is important; such as the EU's Everything-but-Arms Initiative. Significantly, WTO member countries at the Hong Kong Ministerial Conference on 18 December 2005 agreed to grant duty free quota free market access to up to 100 percent of imports from LDCs by 2008 or by the start of implementation of the outcome of the Doha Round negotiations (paragraph (a)(i) of no. 36 in Annex F of the Ministerial Declaration). However, for countries that declare themselves not in a position to do so, they are required to provide at least 97 percent duty free quota free market access for LDC products by 2008 or again by the start of the implementation of the Doha Round outcomes (paragraph (a)(ii) of no. 36 in Annex F of the Ministerial Declaration). It is important for this to be clearly grasped, as the clear understanding reached at the Hong Kong Ministerial Conference, and according reflected in the following wording in no. 36 in Annex F to the Declaration:

“We agree that developed-country Members shall, and developing-country Members declaring themselves in a position to do so should:

(a) (i) Provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability.

(ii) Members facing difficulties at this time to provide market access as set out above shall provide duty-free and quota-free market access for at least 97 per cent of products originating from LDCs, defined at the tariff line level, by 2008 or no later than the start of the implementation period. In addition, these Members shall take steps to progressively achieve compliance with the obligations set out above, taking into account the

impact on other developing countries at similar levels of development, and, as appropriate, by incrementally building on the initial list of covered products.”

38. The implication of this agreement is that LDCs should have duty free quota free market to the EU market by the end of the current waiver on 31 December 2007. If the EU declares itself not in a position to grant 100 percent duty free quota free market access for LDC products, then it is to achieve the 97 percent by 2008 or the beginning of the implementation of the Doha round outcome. But if the EU so declared its inability to grant 100 percent market access to LDCs, it would probably not be expected to take a different position in EPA negotiations. If it would grant 100 percent market access within the EPA framework, it would only be implementing the principles of special and differential treatment. Any EPAs to be concluded must fully reflect this outcome from the Hong Kong Ministerial Conference, not as a concession under EPAs for which LDCs should reciprocate, but as an obligation under the WTO Agreement applying on the basis of non-reciprocity under the principles of special and differential treatment for LDCs. Under these principles, LDCs should not be required to reciprocate for duty free quota free market access into the EU.

#### *Non-tariff barriers and private sector standards*

39. According to the UN Coding System for Trade Control Measures non-tariff barriers take many forms, including rules of origin, customs and administrative procedures and requirements, non-tariff levies, quantitative restrictions, multifarious restrictive government practices, and health and technical standards. There have been occasions when EU health standards have been in contravention of WTO rules, and yet have occasioned great losses to some ACP countries. A telling example was the illegal EU ban on fish imports from around Lake Victoria. This underscores the need for the EU to comply with international rules in formulating and applying standards, including the requirement for a sufficient scientific justification and risk assessment before the health standards are adopted and enforced.

40. In this regard, it would appear that private sector standards set by retailer and producer groups are particularly problematic. These are set to meet consumer tastes in Europe and to address food scares; but in many cases they are far too costly for producers in Africa to meet them, or they may lack the technology to meet them. Studies have shown that most of the standards may have no scientific justification to the extent that they are intended to address health issues.

41. The European Community has taken the view that, as these are private sector standards, and not governmental standards, EU governments and administrations cannot regulate them. However, that view may be inconsistent with the WTO SPS and TBT Agreements. Under those Agreements, Articles 13

and 8 respectively, member states of the WTO are under an obligation to ensure that private sector or non-governmental organisations do not act in a manner inconsistent with the Agreements, and they are under a further obligation not to directly or indirectly encourage the organisations to act inconsistently with the agreements. Besides, the private sector standards are actually enforced at ports of entry, and goods not complying with them are frequently denied entry. In this regard, the European Community should oversee the formulation and enforcement of these standards, in accordance with its WTO obligations under the SPS and TBT Agreements, to ensure that the standards do not act disguised restrictions to trade nor act as non-tariff barriers to imports from ACP countries.

### *Rules of Origin*

42. As noted in some work at the ECA, ever since the schemes were first introduced in the 1970s, non-reciprocal preferential market access for developing countries to the markets of the developed countries, the rules of origin have not been revised to take into account the inhibiting features inherent in them. For the ACP countries, the rules of origin have continued to limit the ability of these countries to access the EU market competitively. The rules of origin are complex, difficult to adhere to and have huge administrative demands not only on the private sector but also on the verifying institutions.

43. In this respect, the potential gains from the enhanced market access have been very much constrained because of excessively strict rules of origin. Rules of origin oblige beneficiary countries to prove that a high percentage of the value-added has been created within national territory, thereby restricting sourcing from third countries. For small, structurally relatively un-diversified developing countries in Africa whose manufacturing sector is dependent in large measure on production inputs, this obviously limits the capacity to export. Some earlier studies conducted in developed countries quantified the cost needed to comply with administrative requirements related to origin as three per cent of the value of the goods concerned. In a more recent study cited by the ECA, it is estimated that the administrative costs of compliance for rules of origin correspond to a tax (i.e. a duty) of between two percent and 5.7%. In some sectors where the preference margin is small, this is enough to completely offset any advantages from the preferential access. Moreover, the total economic cost of applying strict rules of origin impeding the utilization of most competitive inputs is expected to be much higher in the poorest developing countries.

44. As a result, manufacturers and exporters often opt for exporting under MFN conditions and forgo preferences, as indicated UNCTAD in 2003. Excessively strict rules of origin have been a repeated criticism of market access agreements signed by the EU, which have ended up undermining the developmental potential of the said agreements as shown by some World Bank studies.

45. For Africa to fully benefit from the preferences under EPAs, there is need to revise the rules of origin as envisaged at the all-ACP level. The revision would be

to the effect of making the rules, simple, flexible, easy to implement and comply with and should also include all Africa and ACP cummulation. There should be a move away from product specific rules of origin which are difficult to administer to more general rules of application, value addition or level of materials used. With respect to textiles and clothing, single transformation would be ideal.

### *WTO compatibility*

46. What does WTO compatibility for EPAs really mean? Up to this point in time, the view has been that this means compatibility in line with Article 24 of GATT. But there are issues under negotiation in the now suspended Doha Round that were likely to have implications on EPAs especially with respect to special and differential treatment, Aid for Trade and the operationalisation of the development dimensions for developing countries, particularly the LDCs. Even without stretching the definition of compatibility, the position that the EPAs must be compatible with Article 24 of GATT 1994 in its current un-amended form, amounts to reneging on what has been understood all along and was agreed at the beginning of the EPA negotiations. It was clearly understood that Article 24 of GATT was unsuitable and needed to be amended, in order to make it development-friendly and to introduce appropriate flexibility for North-South regional trade agreements such as the EPAs.

47. It was in this context that, under the Doha Work Programme, the ACP Group at the WTO prepared and submitted an important proposal, explaining its concerns over Article 24 of GATT and suggesting ways it could be reformed. This proposal has not been seriously addressed in the WTO negotiations, and it would appear that EPA negotiations are proceeding as if there will be no modification or amendment to Article 24. This ACP Group proposal should now be given a high profile, so as to ensure that it is fully addressed in the negotiations and that it is fully reflected in any outcome of the negotiations. Also, without addressing that ACP proposal, it would not be appropriate for EPAs to be required to be compatible with Article 24 of GATT. As agreed under the Cotonou Partnership Agreement, this is an important area where the EU can support the ACP Group, to ensure that Article 24 is appropriately reformed.

48. Given that the WTO negotiations have stalled, it is important to urgently consider how best to proceed with the issue of WTO compatibility; for without the amendment, there would not be appropriate WTO rules under Article 24 of GATT with which the EPA would have to be compatible.

49. The question of the scope of WTO compatibility continues to be troublesome in another important respect. While the standard view is that compatibility must mean compatibility with Article 24 of GATT, the view that compatibility equally means compatibility with WTO rules on special and differential treatment cannot be disregarded. This alternative view takes it that the Enabling Clause, including the recent jurisprudence from the GSP case, could provide a more appropriate regime for compatibility. The GSP case decided that a developing country group

selected on the basis of objective criteria could be accorded preferential treatment. An area of work for the negotiating groups, in light of this jurisprudence, would be to establish whether they could come under a set of objective criteria that could define them as a group eligible for preferential treatment. The LDCs already constitute such a group. The other criterion could be that of small and vulnerable economies. It should however be clear that some of the criteria could end up covering a few other countries outside Africa that could then claim to be equally entitled to such treatment. So, the criteria need to be carefully formulated and well defined.

50. There is a precedent for this approach of carefully defining a group of countries for eligibility to certain treatment. During the negotiations on the Declaration on the TRIPS Agreement and Public Health, paragraph 6, criteria were found to ensure that only African regional economic communities could produce and export life-saving medicine and other pharmaceutical products, for the entire region in the framework of free movement of goods, through issuing compulsory licenses. The condition imposed, which permitted this, was that such a regional economic community should have LDCs making up at least 50 percent of the member states of the community. It was only African regional economic communities that had LDCs making up at least 50 per cent of the member states.

51. WTO rules clearly recognise the eligibility of LDCs to special treatment. In this regard, quota free and duty free treatment for imports into developed countries such as the EU, from LDCs, has already been agreed – during the December 2005 WTO Ministerial Conference held in Hong Kong, as already pointed out. Given that LDCs already have this, and given that EDF resources were committed under a separate chapter of the Cotonou Partnership Agreement – separate from the chapter requiring EPAs – and given that the amount for the EDF 10 resources has already been set and will not be increased, it would appear unreasonable to expect LDCs to conclude EPAs where they are required to reduce their customs duties to substantially all EU imports to zero.

52. The question of compatibility would therefore appear to require further work, with the aim of ensuring that EPAs are not required to be compatible with inappropriate WTO rules. The stalling of WTO negotiations causes another problem relating to the staging of the conclusion of both sets of negotiations. The understanding has been that WTO negotiations are supposed to be concluded first, before EPA negotiations can be finalized. This is the more important because obligations and rights under the EPAs should not be inconsistent with obligations and rights under the WTO. Liberalization under EPAs is supposed to go deeper than liberalization under the WTO, including in the area of services such as movement of natural persons. For these reasons, EPA negotiations need to always be conducted in tandem with WTO negotiations, but not ahead of WTO negotiations.

*Review of EPA negotiations*

53. A comprehensive review of EPA negotiations is due this year 2006. The ACP-EU joint declaration on the review of EPA negotiations sets out the terms of reference for the review, in quite broad terms. It will be recalled that the ambassadors agreed upon the declaration after a lot of reluctance on the part of the EC both in the build up to the joint ACP-EU Council meeting of Port Moresby, Papua New Guinea, and at the June 2006 ACP-EU Joint Ministerial Trade Committee meeting. Despite the adoption of the joint declaration, it appears that the EC negotiators are still insisting on a light review, rather than a comprehensive review. It should be appropriate for the EU to clearly demonstrate its commitment to a comprehensive review that fully addresses the process, structure and substance of the negotiations; this is what the African Union Trade Ministers called for in their Nairobi Declaration on EPAs.

54. Before finalizing the review, it does not appear sensible to zealously push ahead with EPA negotiations. That would suggest that the review is not expected to influence the course and substance of negotiations. Great attention will need to be paid to the lessons and recommendations from the review; and the recommendations will need to be faithfully implemented. If for instance, measures were recommended for assisting the progress of the negotiations, and these measures were not implemented, that would be unfortunate and ACP countries could seriously re-consider the appropriateness of finalizing the negotiations.

55. The review should consider the question of ratification of EPAs, by cabinets or parliaments. Parliaments or cabinets could have difficulties with ratifying EPAs without a credible development component. It is therefore important that pronouncements by ACP parliamentarians are taken seriously.

56. A second aspect to ratification is that the process may take a long time, before the instruments can enter force. This would mean that even if EPAs were concluded by 31 December 2007, as planned, they might not be in force by 1 January 2008. And where they enter force, they may still need to be domesticated through enactment of domestic legislation, and implementation might require establishment of appropriate institutions. The implication would seem to be that interim measures should be seriously considered. These measures may include consideration of extension of the WTO waiver for the current regime. It is well to bear in mind that when the waiver was agreed upon at the Doha Ministerial Conference, which also launched the Doha Round negotiations, the waiver was set to expire on 31 December 2007 on the understanding that the WTO negotiations would be concluded three years earlier, ie no later than 1 January 2005 – according to paragraph 45 of the Doha Ministerial Declaration.

57. The EC's argument that the current waiver granted on 14 November 2001 at the Doha Ministerial Conference was far too costly to obtain, doesn't seem to enjoy broad support within the ACP regions, who continue to contemplate another waiver. According to the EU, the cost has been that Philippine tuna

imports have increased on the EU market and displaced ACP tuna imports. In this sense, the ACP regions should be the better judge of the cost of waivers in their favour.

58. The review should carefully evaluate prospects for finalizing the negotiations by December 2007. Progress has been slow, and with less than 15 months left, significant divergences remain in key areas. It would appear to be prudent to seriously consider the possibility of extending the negotiations beyond December 2007. Consideration of the extension does not mean giving up on trying to meet the timeframe of December 2007; it is only prudent in light of the huge difficulties the negotiations continue to face.

59. The High Level meeting organised by the South Centre and various non-governmental organisations, and addressed by ACP ministers representing the three major regions, as well as senior officials and civil society representatives, provided a timely occasion for an assessment of the state of negotiations. There was unanimity in dissatisfaction with the positions taken by the EC on key issues such as development, financing, and regional integration. The meeting called for extension of the time frame for EPA negotiations and called upon the European Community to consider seeking an extension of the current waiver. In this regard, it called for full consideration of alternatives to EPAs.

#### *Alternatives to EPAs*

60. The EC should agree to fully explore alternatives to EPAs. This is important for various reasons. First, it is a requirement under the Cotonou Partnership Agreement. Also, it is unlikely that EPAs will have been concluded and ratified and implemented and fully operational by 1 January 2008; even if the negotiations were concluded on time by 31 December 2007. Alternatives for the interim period will be needed. Another consideration is that alternatives will assist Africa to have strong negotiating positions, through having fall back positions and a range of options to promote social economic development.

#### *Need for flexibility in negotiating positions of the EC*

61. The EC should be flexible about its long held views, in light of developments over the years and in response to Africa's concerns. Inflexibility will not assist good progress with the negotiations. Regarding development and additionality of resources, a most critical issue for ACP regions, the EC should be called upon to recognise international developments, including, the LDC conferences, the adoption and pursuit of MDGs, the Monterrey consensus on development financing, the Commission for Africa Report, and the G8 commitments particularly the Gleneagles. All these developments point to the absolute importance of adequate resources to assist Africa register meaningful levels of social economic development. They point also to the need for adequate policy space for undertaking development programmes.

62. And regarding WTO compatibility as another example the EC continues to argue that Article 24 of GATT is flexible enough to be development-friendly. As explained by the ACP group in the proposal and indeed as foreseen in the Cotonou Agreement and various negotiating mandates of the ACP negotiating groups, this provision is rigid, from the point of view of ACP countries. Moreover, empirical studies by the ECA for instance that have introduced different scenarios of asymmetry have shown that Article 24 as currently interpreted is too rigid. The minimum level of asymmetry established in these studies is significant compared to the current interpretations.

#### *Non-execution clause*

63. There are some issues that should not be included in EPAs, as Africa has consistently and strongly indicated. These include the non-execution clause and political cooperation. Inclusion of these issues could promote unpredictability and uncertainty. This is because the clause gives a right to the EU to take punitive measures against the entire region if even one member state is considered to be failing to fulfil conditions on a good human rights record and good governance. While Africa has accepted these principles, they should be addressed and implemented in the proper fora for political dialogue and cooperation, but not in a trade agreement.

64. The broad ACP-EU framework could be such a forum and not a trade arrangement that is designed primarily for the private sector institutions like manufacturers, producers, traders, service providers, etc. The private sector should not be held liable for misdeeds of governments and the ordinary people that stand to benefit from trade should not be punished for the misdeeds of governments. They have therefore strongly opposed inclusion of the non-execution clause.

### **Part 3            Recommendations**

65. The following recommendations are made:

a.     **State of Negotiations:** The current state of negotiations has not adequately addressed all the difficulties and concerns of African countries. These concerns are clearly set out in both the Cairo and Nairobi Declarations on EPAs adopted by the African Union Ministers of Trade in 2005 and 2006 respectively. The concerns include: failure of the negotiations to have a development focus; the imbalance in the negotiations towards a focus on trade liberalisation; and lack of appreciation of the major adjustment challenges that African economies would face in implementing EPAs. In addition, the pace of negotiations has been greatly slowed by the time it takes for the EU to respond to issues that are formally presented to it. As a result, some negotiating groups are falling behind the timeframes for their negotiations. The EU should respond more quickly and should not be as inflexible as it has been, in order to hasten progress in the negotiations. The European Commission should positively respond to the key

concerns of ACP negotiating groups, and should have regard to the pronouncements of European Parliamentarians and some member states calling upon the negotiators to fully take into account and positively respond to the concerns of ACP negotiating groups.

b. **Coordination of EPA negotiations among the groups:** African negotiators in each of the regions could benefit greatly from regular coordination meetings at the technical level. Given that they are likely to face similar issues from the European Union, coordinated consultations should enable them to formulate and define informed positions on key issues as well as appropriately respond to the EC positions. The negotiating groups should again be requested to invite representatives of other negotiating groups and to closely involve them in their events and negotiations.

c. **Coordination of negotiations by the African Union:** The AU coordination of the negotiations should be strengthened. The negotiating groups should involve the Commission of the African Union in their events and negotiations, and should make regular reports on the state of play as well as appropriate recommendations for resolving any issues arising. So far, only one negotiating group, ESA, has regularly and consistently submitted progress reports to the Commission of the African Union. The African Union Commission should participate in the actual negotiating meetings as coordinator and advisor, providing technical input and ensuring that the EPAs are fully in line with the development and integration objectives of the African Union.

d. **Divergence between EU and ACP positions:** There are divergences between the EU and Africa negotiating groups on key issues, which still remain unresolved. These include, among others, divergences in the areas of regional integration and risks that EPAs pose, coordination among negotiating groups, development cooperation and finance, and WTO compatibility. The parameters set for the African negotiators in the previous EPA declarations should be adhered to, in order to assist coordination and harmony in positions taken and to draw on the strength of the Common African Positions on key issues as set out in those Declarations. Given the divergence in the negotiations that remain unresolved there is need for more political involvement that can facilitate the process to move forward as acknowledged and recommended in Port Moresby during the ACP Council of Ministers meeting. In this regard, the ACP and AU summits planned for December 2006 and January 2007, respectively, should be requested to address key issues that arise in EPA negotiations.

e. **Preparedness:** The level of preparedness depends on availability of informed and objective options leading to positions that clearly reflect each countries vision and strategy. This preparedness is only possible if countries have undertaken country-specific studies. Therefore, detailed and more specific simulation studies should continue to be undertaken for those countries that have not yet done so. Before these studies are finalized and thorough assessments have been done at the national, regional and continental levels, the

preparedness to enter EPAs should be considered not to have yet been adequately addressed.

f. **Potential adjustment costs remain an issue:** Countries negotiating the EPAs are concerned with the potential adjustment costs and the questions of how to adjust still persist. Clear measures therefore need to be defined that will help these countries address the challenges of adjustment. Experience for North African countries is that the EU helped establish well-funded adjustment programmes for these countries. These support programmes helped leverage enterprises in implementing the Association Agreements. A broad EPA adjustment facility in addition to the EDF is an appropriate instrument for African countries negotiating the EPAs. This accompanying adjustment facility should cover social development; economic reforms; private sector development and institutions development support.

g. **Rules of origin:** Rules of origin are an important element for a pro-development outcome of the EPAs. As such, restrictive rules of origin cannot help EPAs realize their intended development results. It is important therefore to finalise the process of formulating simple and flexible rules of origin at the all-ACP level in order to guide the negotiating groups, taking into account Africa's integration goals. The rules of origin should be, simple, flexible, easy to implement and comply with and should also include all Africa and ACP cummulation. There should be a move away from product specific rules of origin which are difficult to administer to more general rules of application, value addition or level of materials used. With respect to textiles and clothing, single transformation would be ideal.

h. **Health and technical standards:** Health and technical standards have the potential to limit the ability of African countries to benefit from trade with the EU. In this regard, the harmonisation of technical and health standards as part of the EPAs and application of internationally agreed rules must be taken into account in the negotiations. The European Community should oversee the formulation and enforcement of private sector standards, in accordance with its WTO obligations under the SPS and TBT Agreements, to ensure that the standards do not act as disguised restrictions to trade nor act as non-tariff barriers to imports from ACP countries.

i. **Regional integration:** Regional integration is an African priority in accordance with the legal instruments and programmes for the establishment of the regional economic communities and progressively the African Economic Community, and in accordance with the Constitutive Act of the African Union. Africa is currently taking significant measures to enhance regional integration and address the question of rationalisation of RECs. The EC should fully recognize and respect these measures, and work within them. The EPAs should be supportive of this process and should not be seen to undermine it, including, among others, in the areas of trade liberalization and commitments on elimination or reduction of trade barriers to EU imports, EPA configuration and

membership in the RECs, development cooperation, and financing of the programmes of the RECs. Reinforcement of regional integration is a pre-requisite for the African countries being able to benefit from the EPAs. In this regard, regional integration should always be given primacy over EPAs, which should support and strengthen it.

j. **Article 24 of GATT 1994:** Article 24 of GATT, unless appropriately modified will limit the flexibility of the African countries to benefit from EPAs. It was clearly understood that Article 24 in its current un-amended form and as currently interpreted was unsuitable for pro-development EPAs and needed to be amended. The amendment would aim to make it development-friendly through introduction of appropriate flexibility for North-South regional trade arrangements such as the EPAs. Without appropriate flexibility it would not be possible to use the most appropriate methodology for computing substantially all trade, for instance. In this regard, the ACP proposal at the WTO should be fully taken into account by the negotiating groups in continuing with their negotiations and should be fully reflected in the outcome of the WTO negotiations. In its un-amended form, Article 24 of GATT should not provide the rules with which EPAs should be compatible.

k. **Coherence between the Doha Round and EPA negotiations:** The EPA negotiations are intertwined with the Doha Round of multilateral negotiations. The suspension of the Doha Round is therefore likely to have serious implications on the progress and content of the EPA negotiations and on the final agreed EPA texts. The need to ensure coherence in any commitments by the African countries in the EPAs with the progress made in the Doha Round must be emphasised. It would be premature to finalise and conclude EPAs before the conclusion of the WTO negotiations under the Doha Work Programme. Also, it is important to ensure that the EPAs do not contain obligations on the ACP regions that would be far in excess of WTO obligations. Issues that have been rejected in the WTO by Africa should not now be introduced in the EPAs.

l. **Alternative to EPAs:** Alternative to EPAs in the context of Article 24 of GATT and the Enabling Clause should continue to be fully explored while taking account of the Cotonou Partnership Agreement. This will help to give the negotiating groups fallback positions and broad latitude in negotiations.

m. **Review of EPA negotiations:** There is ample evidence that there are still issues that require serious attention in the EPA negotiations. These issues require interventions at both the political and technical level. A comprehensive review in accordance with the Joint ACP-EU Declaration on the review must be urgently undertaken and finalised. Both the ACP and EU sides need to take this seriously. Active participation in an all-inclusive review will help draw appropriate recommendations with regards to outstanding issues, flexibilities, and what needs to be done. The review report will assist in helping the negotiators in terms of the way forward for the negotiations. There is also need for coordination among the negotiating groups as they undertake the exercise. The African Union

Commission should produce a consolidated report together with the ECA, relating to the four negotiating groups of Africa, as requested by the ACP Secretariat, and within the modalities agreed by the ACP Ministerial Trade Committee meeting in June 2006.

**END**