

Principles of EPA Negotiations. Non-paper on Negotiations of Economic Partnership Agreements

Author: Satiawan Gunessee, Ambassador of Mauritius

Date: 2002-05-17

PRINCIPLES OF THE EPA NEGOTIATIONS

NON PAPER II

on Negotiations Of Economic Partnership Agreements

By Mauritius

17 May 2002

A. INTRODUCTION

1. Pursuant to Article 37(5) of the Cotonou Agreement, Mauritius issued the Non-Paper I on the merit to conclude an All ACP-EU Framework Economic Partnership Agreement on the basis of a two-phase approach to the EPAs negotiations.
2. During the first phase covering the period 2002-2004 negotiations will deal with objectives, principles and cross-cutting issues of common interest, as well as common mechanisms. Soon after the formal launch of EPAs negotiations in September, 2002 interested ACP States will, on the basis of common terms of reference, jointly undertake with the Commission impact assessment of trade liberalisation on their economies, in general, and on their various industrial sectors, in particular. This will include the assessment of loss in government revenue arising from tariff reduction on import of EU products, and the financial and other resources required to build capacity necessary to take advantage of new and additional market access opportunities in the EU under EPAs. Such an exercise will also take into account EPAs' impact on regional integration. On the basis of the outcome of the first phase of negotiations, the ACP States will be able to determine in the year 2004 whether they are in a position to conclude economically viable, politically acceptable and socially sustainable EPAs.
3. The nature and complexity of the exercise and the time required to know the outcome of certain evolving events which will influence the content and justification of EPAs militated in favour of a sufficiently long first phase. Hence, the proposal of the period 2002 – 2004.
4. The second phase, extending from 2004 – 2007, will address regional specificities and needs as well as the possibility for like-minded ACP States to negotiate together trade issues of common interest like services, e.g. tourism. Moreover, during this phase ACP States participating in Commodity Protocols may collectively negotiate with the EU on how to safeguard the benefits derived therefrom while ensuring their WTO compatibility in the context of EPAs as stipulated in Article 36(4) of Cotonou.
5. Such an approach is vital if the ACP States are to participate effectively in a liberalised trading environment and thus achieve one of the three objectives of the Cotonou Agreement, i.e. the smooth and gradual integration of the ACP States in the world economy. The Non-Paper II also tries to address the fundamental and related questions of WTO compatibility and resources needed to prepare the ACP States to finance adjustment costs.

B. BACKGROUND

6. In September 2002, the ACP States will formally start negotiations of economic partnership agreements (EPAs) with the European Union on the basis of the level and procedures to be agreed by the ACP Group. The nature and form of EPAs will be informed by the outcome of the negotiations. In this respect, the ACP will examine all options that will best serve the interest of all ACP States.
7. The EPA negotiations are expected to put in place the third pillar of the ACP-EU Partnership i.e. the economic and trade cooperation, in addition to the political dimension and development finance cooperation already established under the Cotonou Agreement.
8. The Cotonou Agreement has established the overall framework for economic and trade cooperation. The EPAs have, therefore, to be coherent with the objectives and principles of the Cotonou Agreement because all the three

closely inter-linked pillars of ACP-EU Partnership Agreement have to be mutually reinforcing and supportive. A single set of objectives and principles as well as clear modalities for the negotiation of EPAs could help to achieve the coherence.

9. Since the EPAs are to build on regional integration initiatives so as to achieve the stated objective of the gradual and smooth integration of the ACP States in the world economy, the EPAs will have to be supportive of the regional integration programmes (RIPs) of ACP States and regions. Indeed, EPAs should not destabilise RIPs or compete with them. In this respect, they have to fully take into account the development objectives and strategies of the ACP countries and regions with due regard to their national interests as well as their bi-lateral, regional and multilateral obligations in the trade sector.

10. The process of establishing the new economic and trade cooperation agreement will by no means be simple as it will be pre-conditioned on the building of capacities. In this respect, it will entail, on the part of the ACP Group, articulation and effective internalisation into the negotiating process of its development objectives, the meaningful link between development, investment and trade, and poverty alleviation as well as the sustainability of the future EPAs.

C. FUNDAMENTAL OBJECTIVES.

11. The overarching objective of the ACP Group is to negotiate an economically viable, socially acceptable and politically sustainable economic and trade cooperation agreement with the European Union within the framework of the Cotonou Agreement. In specific terms, the negotiations will aim at:

(a) concluding Economic Partnership Agreements (EPAs) that will help substantially improve the ACP exports to the EU, promote intra-ACP cooperation and regional and inter-regional trade, increase the ACP share of world trade, and thereby contribute to sustained economic growth necessary for promoting the objectives of sustainable development and poverty eradication by building productive, institutional and human resource capacities on the basis of a comprehensive ACP Positive Development Agenda. Such an Agenda will be geared towards;

(i) fostering the smooth and gradual integration of ACP States into the world economy, with due regard for their political choices and development priorities with a view to securing an increased share in world trade and EC's imports from ACP States;

(ii) establishing a coherent support framework that will enable the ACP States to manage the challenges of globalisation and to adapt progressively to new conditions of international trade thereby facilitating their smooth transition to the liberalised global economy while minimising the adjustment costs;

(iii) fostering regional integration processes on the basis of the regional integration programmes established by the various ACP regions as envisaged in Abuja Treaty and NEPAD for Africa, CARICOM Development Programmes and Pacific Forum Programme for the Caribbean and Pacific regions respectively;

(iv) improving on the "special and differential" treatment provisions in WTO Agreements as well as the review of the relevant WTO rules to take into account the specificities of the various categories of the ACP States as well as their particular trade, investment and development needs; and,

(v) upholding the legal obligations and political commitments enshrined in Articles 35, 36, and 37 of the Cotonou Agreement for the negotiation of economic partnership agreements (EPAs), in particular the safeguarding of the benefits which the ACP States currently derive from the existing trade arrangements including the Commodity Protocols;

(b). structural transformation of ACP States into knowledge-based internationally competitive economies capable of exploiting new and additional market access opportunities in the EU, the ACP regions and in the world at large through the adoption and adaptation of information and communication technologies, development of science and technology as well as the effective mobilisation and utilisation of scarce resources into the productive sectors in order to attract and facilitate domestic and foreign investment crucial for sustained growth and development.

(c). reducing the dependency of ACP States on the production of primary products and natural resource-based sectors by diversifying and increasing value-added including through the development of inter-sectoral linkages. In this respect, the private sector is expected to play a major role.

D. GUIDING PRINCIPLES

12. In addition to the principles enshrined in the Cotonou Agreement, the Georgetown Agreement and the 1999 ACP Libreville Summit Declaration, the EPA negotiations should be based on the following specific principles:

(i) Positive Differentiation.

13. Forty out of the seventy eight ACP countries are in the category of the UN defined list of least developed countries (LDCs). The majority of the remaining thirty eight states are on the fringe of the LDCs when viewed in terms of proportion of populations under the poverty line and the vulnerability of their economies, particularly those of the small, island and land-locked economies.

14. Hence, there is need to mainstream in the EPAs the principle of positive differentiation as stipulated in Articles 2 and 35(3) of the Cotonou Agreement i.e. "... the Parties reaffirm their attachment to ensuring special and differential treatment for all ACP countries and to maintaining special treatment for ACP LDCs and to taking due account of the vulnerability of small, land-locked and island countries." This principle has to be cross-cutting in EPAs.

15. With regard to the LDCs, the EU has started since 2001 to provide duty and quota free access under the Everything But Arms Initiative in accordance with Article 35(3) and Declaration XXIII of Cotonou. The interests and needs of the other categories of the ACP States remain to be addressed. This should not await the conclusion of EPAs.

(ii) ACP Unity, Solidarity and Cohesiveness.

16. The ACP approach to the negotiations of EPA should be guided by the overriding principle of unity and solidarity. This is not in contradiction with the principle of positive differentiation. The re-affirmation and observance of this principle at the highest political level is in the interest of all ACP States because, as evident in the negotiations of the successive Lomé Conventions and the recent Cotonou Agreement, collectively the ACP States can secure a better deal from the EU than while negotiating at individual ACP State's level or even at ACP regional or sub-regional level. The unity of the ACP Group is its force and in its solidarity lies its negotiating strength.

17. Moreover, the ACP States, as a Group, can be a more viable and even formidable partner for the EU when acting together in international fora and organisations (WTO) to identify and defend common interest. This was amply demonstrated at the Doha WTO Ministerial Conference in November 2001.

18. This principle is in consonance with the provision of Article 39 of Cotonou and the Preamble of the Georgetown Agreement and the Libreville Declaration adopted by the ACP Heads of State and Government in 1999. This principle of ACP unity and solidarity should invariably guide the EPA negotiations.

19. The maintenance of the cohesiveness of the ACP Group throughout the EPA negotiation will, therefore, have to be paramount to safeguard and protect the economic and trade interest of all ACP States.

(iii) Principle of Partnership.

20. The principle of partnership has characterized ACP-EU relations since the conclusion of the first Lomé Convention in 1975. It has been given more prominence in the Cotonou Agreement and should be a guiding principle in the EPA negotiations which are expected to establish a true, strengthened and strategic partnership between the ACP and the EU as stated in Article 35(1) of Cotonou. This principle should inform EPAs negotiations.

(iv) Preservation of Lomé Acquis

21. Negotiations of EPAs will be based on a "comprehensive approach which builds on the strengths and achievements of the previous ACP-EU Conventions"- re. Article 35 of Cotonou Agreement. The EU has agreed on its side that trade liberalisation "shall build on the acquis and shall aim at improving current market access for ACP countries" including through an examination of rules of origin, sanitary and phytosanitary measures, and implementation of specific measures addressing supply-side constraints (Declaration XXIII).

22. In the meantime, the EU has established the "Everything But Arms" initiative in favour of the least developed countries (LDCs), including the 40 ACP LDCs. Under the EBA, those ACP States already have duty and quota-free access for their products to the EU market for an indefinite period.

23. On the other hand, under Article 37(6) in respect of non-Least Developed ACP States not in a position to negotiate EPAs, the EU will examine all alternative possibilities in order to provide these ACP States with "a new framework for trade which is equivalent to their existing situation and in conformity with WTO rules".

24. Moreover, in conformity with Article 36(4), the parties have agreed on the need in the context of the new trading arrangements, to review the Commodity Protocols, in particular as regards their compatibility with WTO rules, with a view to safeguarding the benefits derived from the Commodity Protocols bearing in mind the special legal status of the Sugar Protocol. The basic principle is to safeguard the benefits and not only market access.

25. Therefore, irrespective of the outcome of the EPA negotiations, no ACP State should be worse off in its trade and economic cooperation arrangement with the EU in the post-2007 period.

(v) Coherence and Consistency.

26. Maintaining coherence in both the approach and during actual negotiations will be an important challenge for the ACP to face as a Group, regionally and individually. This is because during the period 2002-2005 many ACP States will be involved in a number of negotiations in parallel at:

- (a) WTO Level
- (b) Regional/sub-regional level
- (c) ACP regions and countries with third countries
- (d) Other fora/organisations dealing with negotiations closely linked to the EPA negotiations.

27. In addition, there is a need to ensure consistency between national and regional policies and interests with the overall ACP interests.

28. As agreed under "the Procedural Guidelines" it will be essential that coherence at all these negotiations is scrupulously observed to enable the ACP Group to secure the best possible results from the EPAs and other negotiations.

(vi) Sustainability

29. New WTO-compatible EPAs will have significant implications on the political and socio-economic fabrics of the ACP States. The EPAs should maximise the positive impact and minimise adjustment costs necessary for their sustainable implementation. Moreover, EPAs should lead to trade creation and not trade diversion to avoid any welfare loss. This is important for EPAs sustainability.

30. The principle of sustainability should guide the ACP negotiating process and this should be reflected at the level of:

- (a) economic adjustment, including fiscal and industrial adjustment costs of EPAs;
- (b) social and political dimensions of EPAs;
- (c) institutions, human resource and supply side constraints and capacities of ACP States;
- (d) global economic and trade environment; and,
- (e) governance at national, regional, ACP-EU and multilateral level.

(vii) Sequencing.

31. Economic and trade cooperation is expected to be built on regional integration of ACP States. At present nearly all ACP States are involved in one form or another and in varying degrees of regional integration programmes. These trade integration programmes should have precedence over EPAs for any trade liberalisation commitment vis-à-vis the EU if these ACP regional integration and cooperation programmes are not stifled or destabilised.

32. The ACP States, besides not having the capacity to liberalise in parallel and concurrently with the EU, must first consolidate their own regional integration. In the case of African ACP States, priority must be given to integration at the African Continental level on the basis of the 1991 Abuja Treaty on the establishment of the African Economic Community (AEC) and the achievement of NEPAD objectives. Under NEPAD African Leaders have pledged that, based on a common vision and shared conviction, they have a pressing duty to eradicate poverty and to place their countries, both individually and collectively, on a path of sustainable growth and development.

33. EPAs should support the overarching objective of the ACP regional integration programmes/initiatives based on the principle of sequencing, rather than destabilising their process of integration. The consistency of trade policies is also a fundamental pre-requisite for the ACP States to gradually and smoothly integrate the world economy.

34. Similarly, regional integration programmes/initiatives in the Caribbean and Pacific regions of the ACP Group should be given priority over EPAs. This is important for the cohesiveness of the ACP Group and consistency in the trade policies of the ACP States and their regions.

(viii) Flexibility/Asymmetry.

35. The flexibility, both present and future in the context of the review of the GATT/WTO rules under the Doha Work Programme, should be used to take into account the level of development of the ACP States as well as their trade, finance and development needs. In this regard, WTO compatibility will be viewed not only from the present but also the future rules in order to make EPAs acceptable to the WTO.

36. There is "a priori" no commitment to negotiate EPAs on the basis of only Article XXIV of GATT 1994. Both the ACP and the EU should, therefore, work closely together in Geneva, to make the relevant GATT/WTO rules as

flexible as possible, including in the area of services. A review of the 1979 Enabling Clause should be sought to facilitate the conclusion of new WTO-compatible trading arrangements between a group of developed countries (EU) and a group of developing countries (ACP Group).

(ix) Legitimacy, Transparency, Inclusiveness.

37. EPAs will have to establish their legitimacy if they are to become real instruments of sustainable development of the ACP States. This will require the inclusion of all stakeholders, particularly, the private sector and civil societies in the negotiating process. An all-inclusive approach may better generate the sustainability and support which is crucial for effective implementation of EPAs. The EPAs negotiations will also have to be conducted in a transparent manner as this may later confer legitimacy.

E. POLICY DIMENSION-SECTOR WISE

38. EPAs negotiations will have to build upon clear policy objectives in all areas of negotiations. The ACP Group on its part will establish and assert its policy objectives into the negotiating process. Most of these policy objectives are well accepted by the international community building upon the Millennium Development Goals (MDGs), the results of the Doha WTO Ministerial Conference and the Monterrey UN Conference on Finance for Development. The Cotonou Agreement provides the baselines in support of the ACP policy objectives.

39. The following may be relevant in this respect in particular for the contents of EPAs:

- (a) sectors that should be included in the negotiations;
- (b) clusters of tariff lines - existing, additional, non-negotiable ones;
- (c) rules of origin - simplification and relaxation of current rules, negotiating new ones for products originating from the EU, including the negotiation of tariff lines;
- (d) safeguards and threshold values and the respective trigger mechanisms;
- (e) avenues to operationalise special and differential treatment based on the outcome of the Doha WTO work programme;
- (f) technology transfer based on the report of the WTO working group on the relationship between trade and technology transfer;
- (g) debt cancellation and investment as recommended by the WTO working group on the relationship between trade, debt and finance;
- (h) specific measures for small island and land locked ACP States as recommended by the WTO work programme on issues relating to small economies;
- (i) ACP undertakings and negotiations on electronic commerce once the report of the Fifth Session of the WTO Ministerial Conference on possible deliverables is known.

F. WTO COMPATIBILITY OF EPAs

40. It should be recalled that one of the arguments put forward for the non-renewal of the Lomé non-reciprocal preferential trade regime was that it was not WTO compatible and that it would become increasingly difficult to obtain waivers in future. The ACP Group agreed, not without reluctance, to negotiate new WTO-compatible trading arrangement to replace the Lomé trade regime in 2008. But the GATT/WTO rules are themselves not clear and the WTO is still evolving since its inception in 1995.

41. It should be recalled that at the establishment of the WTO, members agreed that their relations in the field of trade and economic should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development. These objectives are also enshrined in one way or another in the Cotonou Agreement.

42. They also recognized that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development. Implicitly the Cotonou Agreement subscribes to this.

43. But the WTO rules and disciplines and decisions are not always conducive towards the achievement of the stated objectives of the WTO. The clear and unequivocal position of the ACP Group is that the current WTO rules are inherently imbalanced against the development needs of the Group. In line with the results of the Doha WTO Ministerial Conference, the ACP Group will, therefore, refrain from making commitment(s) on this front until WTO rules for trade arrangements between developed and developing countries become clear, and also those on "special and differential" treatment.

44. In the Doha WTO Ministerial Declaration, WTO Members reaffirmed that the promotion of sustainable development is an overarching goal of the negotiations. This objective is also reflected in the decision of WTO Members to agree to clarify the rules of multilateral environmental agreements and their relationship with the relevant WTO agreements.

45. Furthermore, it is in this spirit to promote a Development Agenda in consonance with their recognition that "... regional trade agreements can play an important role in promoting the liberalisation and expansion of trade and in fostering development" that WTO Members agreed "... to negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements." Hence new WTO-compatible EPAs have to be development oriented and WTO rules and disciplines should support this process.

46. At the WTO, the EU and ACP have much to gain to work closely on all subjects of common interest. A successful integration of ACP countries in the world trading system will greatly contribute towards a concretisation of all the fundamental objectives of the Cotonou Agreement namely economic growth, employment, poverty eradication and good governance. This will eventually make the ACP Group of States a more attractive partner for the EU for their mutual interest.

47. The current negotiations at the WTO on a number of trade-related areas and the outcome of the forthcoming 5th WTO Ministerial Conference in Mexico should provide the necessary basis for determining the extent of commitments in terms of WTO compatibility and EPA coverage. This also explains the position of the ACP to start negotiations on the contents etc. of EPAs after 2004 when the outcome of the Doha WTO Work Programme will hopefully be known.

G. ADDITIONALITY OF RESOURCES FOR ADJUSTMENT

48. The development finance cooperation pillar of the Cotonou Agreement delineates the broader lines of cooperation within the current framework of priority areas that were, in the course of negotiating this component, viewed as essential to eradicating poverty, promoting development and contributing to political governance. Implementation of EPAs, or adjustments in anticipation of the implementation of the EPAs, will generate a new set of additional costs to the economies of the ACP countries. The debt burden - both external and domestic of most ACP States do not allow them to harness the necessary resources to finance both the development and adjustment costs. The present level of EDF, ODA flows and FDI do not allow the ACP to successfully undertake the work.

49. Additional resources, over and above those available under EDF, should have to be committed by the EU through a regular budgeting process rather than on a voluntary basis currently under EDF. Moreover, to enable the ACP States to jump-start the preparatory process to better adapt to and operate in a liberalised trading environment, the ACP would urge the EU to take the bold measure at the launching of EPA negotiations to cancel all ACP debt owed to the EU and its Member States.

50. This political signal may play an important catalytic role to attract much needed foreign direct investment and flows of additional resources that are needed for the sustained growth and sustainable socio-economic development of ACP States, without which even the best WTO compatible trading arrangement will not address the objectives set out in the Cotonou Agreement. Of course, in a partnership the ACP will have to assume its share of responsibility by supplying the appropriate flanking policies and governance.

51. Building on the experience of the two generations of structural adjustment programmes, the EPA negotiation process should aim at:

- (a) creating a special economic and trade compact in terms of:
- (b) additional resources
- (c) addressing supply-side constraints
- (d) strengthening product-specific export corridors
- (e) strengthening trade facilitation capacities/instruments.
- (f) targeting investment promotion / facilitation through resource allocation in addition to creation of enabling environment.

52. All these activities will require resources. The ACP States will not be able to mobilise these resources from within. The success of EPAs in helping the ACP States to smoothly and gradually integrate the world economy will depend on the support to be provided by the EU and the capacity of the ACP States to undertake difficult adjustment programmes.

Ambassador
S. Gunessee
Embassy of Mauritius
17 May 2002.