



International Centre for Trade
and Sustainable Development



*The EPAs and Sustainable Development:
Benchmarks for Pro-Development
Monitoring of the Negotiations*

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PREFACE

We often hear that poor countries should trade themselves out of poverty; that trade is a more effective way to reduce poverty than aid; and that international trade promotes closer ties between nations and peoples, contributing to peace.

Considerations like these are behind many initiatives to promote international trade with and between developing countries. The WTO Doha Round is called a “development round”. Both EU Trade Commissioner Peter Mandelson and his predecessor Pascal Lamy have stated repeatedly that Economic Partnership Agreements (EPAs), aimed at establishing free trade between the Africa Caribbean and Pacific (ACP) countries and the EU, must be genuine development tools.

What do people mean when they say that trade should promote development? What is their understanding of development? Is it poverty reduction, economic growth, or pro-poor growth (however this might be defined)? Is analysis made of the effects of various trade regimes on different groups in society, urban-rural, poor women and men?

Produced jointly by ICTSD and APRODEV, this report tries to go beyond the rhetoric and makes proposals for the practical integration of development perspectives in the EPA negotiations. The Cape Town Declaration, unanimously adopted by the ACP-EU Joint Parliamentary Assembly in March 2002, called for the establishment of development benchmarks against which to assess the conduct and outcome of the ACP-EU trade negotiations. This report aims to meet the challenge laid down by the Cape Town Declaration by formulating a number of such benchmarks. It does not make a case for delaying or accelerating the EPA negotiations but focuses on ensuring that EPAs can be used as an instrument to work towards the Millennium Development Goals and beyond.

As many areas and issues still have to be worked out in more detail, this report does not represent the final word on how to include development perspectives in the EPA negotiations. It is hoped, however, that the report’s main message – to apply a benchmark approach in monitoring the EPA negotiations – finds an open ear with the ACP and EU negotiators. More broadly, the benchmark approach could also be applied to other international negotiations where asymmetry between developed and developing parties justifies special efforts to ensure trade liberalisation works in favour of sustainable human development.

ICTSD and APRODEV

Geneva and Brussels,
May 2005

INTRODUCTION

The ACP countries are facing trade negotiations on several fronts simultaneously over the next few years. These include the EPAs with the EU under the Cotonou Agreement, the Doha Round of the WTO launched in 2001, and those within economic groupings in their own regions. A clear and positive link between development strategies and the new trade rules to be generated by these negotiations has still to be developed and articulated in practical terms. After a first phase of negotiations, the six ACP regional trading blocs¹ have now started the second phase of negotiations with the EU.

In terms of development content, little substantive progress has been achieved in the EPA negotiations due to the widely differing approaches of the two parties on how to integrate the development dimension of EPAs in practice. This is the current state of play in relation to development issues despite official declarations by the EU and the ACP about shared objectives and negotiation guidelines on development, competitiveness and poverty alleviation; as well as on asymmetrical liberalisation and EU assistance for the structural transformation of ACP economies.

In other words, even though the EPA process appears to have been conceived with sustainable development goals in mind, progress in the negotiations has yet to reflect this ambition. However, recent concern over the issue as expressed by political actors and civil society organisations in the ACP and Europe has created a new opportunity to put the EPA process back on a development track.

In an apparent response to these concerns, recent statements issued by EU Trade Commissioner Mandelson refer to a new start for the EPAs, and seem to establish political guidelines that might lead to a more open and pro-development course for future EPA negotiations. According to these guidelines, development considerations should be central to the EPAs, suggesting that the EPAs become trade and development tools explicitly, as opposed to the classical, hard-nosed, free trade agreements. Furthermore, the EPA process would be put under continuing review, *'to ensure that at every stage in the negotiations, we really do put development first'*.

Based on these premises, this paper proposes a system of development benchmarks that could be instrumental in the development-focused monitoring of the EPA negotiations. Section 1 discusses the role and priorities of the EPAs and the basis for a continued review of the process. In response to the perspective offered in the first part of this paper, Section 2 outlines a proposal for a set of development benchmarks. The Annex at the end of this paper summarises the findings of the ICTSD assessment on the progress of the EPA negotiations which were used to inform the proposal.

The aim of this paper is to stimulate actors participating in the negotiations, as well as members of parliaments and development-concerned communities in the ACP and the EU, to use development points of reference for assessing the substantive progress of the EPA negotiations towards the development goals they should serve.

¹ The six ACP regions are Central Africa (CEMAC), West Africa (ECOWAS), Eastern and Southern Africa (ESA), the Caribbean, the Southern African Development Community (SADC) and the Pacific.

1. THE EPAs AND SUSTAINABLE DEVELOPMENT: SUBSTANTIVE PRIORITIES AND BASES FOR A CONTINUED REVIEW PROCESS

Since the EU's initial proposal in 1996 to negotiate EPAs with ACP regional groupings, all parties have stressed the necessity for EPAs not be standard reciprocal free trade agreements (FTAs), but instead to constitute 'tools for development'. This objective was reaffirmed in the Cotonou Agreement and in numerous declarations since, including the Cape Town Declaration² and the EPA negotiating mandate and guidelines of the EU and the ACP, as well as in political statements recently issued by Commissioner Mandelson.

The development aims and priorities agreed for the EPAs, as well as the bases for a continuing review of the EPA process are outlined in Sections 1.1 through 1.4 of this paper. This is necessary for a targeted definition of the benchmarks that follows in Section 2.

1.1 The EPAs as enabling frameworks for pursuing Sustainable Development goals

From a development perspective, not all kinds of developing country integration into the global economy may be considered positive because trade liberalisation on its own cannot ensure the attainment of development objectives in economic, social and environmental arenas. Balanced growth and poverty reduction do not necessarily flow as automatic outcomes from liberalisation processes, rather these objectives must be actively promoted by policies in conjunction with appropriate adjustment to the opening-up of an economy.

Lessons learnt over the last 30 years should be used to create international trade agreements that not only seek to integrate developing countries into the global economy, but are in and of themselves pro-development instruments. In other words, these agreements should not focus solely on trade liberalisation policies and the negotiation of trade rules for market access in favour of developing countries' exports. Although these aspects of international trade agreements are clearly important, they are not sufficient if development and equity are the goals.

Official declarations by the EU and the ACP Group on objectives and guidelines for negotiating the EPAs, issued since the initiation of the negotiations,³ have shown fundamental agreement about the instrumental role that the EPAs should have in pursuing the sustainable development goals of the ACP. Furthermore, these official declarations have expressly recognised the importance of implementing competitiveness and poverty alleviation strategies, ensuring EU assistance for structural transformation of ACP economies and embracing the principles of asymmetrical liberalisation between ACP countries and the EU.

² At the 4th ACP/EU Joint Parliamentary Assembly in Cape Town, South Africa, from 18 to 21 March 2002, a Declaration on the EPA negotiations was issued. The Declaration, initiated by the ACP members of the Joint Parliamentary Assembly seeks to 'establish benchmarks' against which the process of negotiations can be assessed.

³ See Objectives in Box 1.1; five principles have been agreed by the two parties that could be considered guidelines for the negotiations: i) ensuring that no ACP country is left worse off in terms of conditions of access to the EU market than under the current trade arrangements; ii) the recognition that trade liberalisation should occur on an asymmetrical basis; iii) the need for effective programmes to address the supply-side constraints of ACP economies; iv) comprehensively addressing the external effects that the EU's CAP may generate on the ACP economies; and v) the importance of extending effective assistance to fiscal restructuring in those ACP countries that heavily depend on customs revenues generated from trade with the EU. See the report on the assessment of the negotiations conducted as part of this initiative: 'Assessing progress of the EPA Negotiations from a Sustainable Development Perspective', Brussels, January 2005.

Box 1.1 shows excerpts from selected declarations confirming these ideas, including recent statements issued by Commissioner Mandelson.

Box 1.1: The role of EPAs as instruments for Sustainable Development and the importance of development policies and asymmetrical liberalisation in the ACP.

Two objectives summarise the main goals established for the EPA negotiations in the *Cape Town Declaration* and other political statements issued by the EU and ACP states:

- To promote sustainable human development, whose outcomes should be expressed not only in economic terms but also in the social and political dimensions of development, which implies putting equity goals at the forefront of trade negotiations and including a broad range of non state actors in discussion of trade policy options; and
- To improve the level of productivity and the range of value-added products of ACP economies, and to foster their structural transformation so that their production systems shift away from extreme dependency on basic commodities towards the production of goods and services with higher demand growth and favourable price trends.

In a speech and memorandum issued on the occasion of his participation in the Civil Society Dialogue Group held in Brussels on 20 January 2005 EU Trade Commissioner Peter Mandelson expressed his views on ‘what the agreements must now be about’:

- Until now, the EU-ACP relationship has simply not delivered on trade. It has adhered to the *status quo* and to a cycle of dependency.... EPAs need to change so their development focus is strengthened. They should become explicitly what they really are: trade and development tools. They are not classical, hard-nosed, free trade agreements...
- The Agreements should be geared towards South/South economic integration, region by region. The EPAs are there to build markets in the ACP, primarily for the ACP’s own benefit, not aggressively to open them to us!
- The EPAs are about strengthening the ability of the ACP to tap into market opening. This means reducing, through well-targeted development support, capacity constraints and helping to overcome poor economic and social infrastructure. Economic capacity building must come first in the EPA negotiations. Therefore, while EPAs themselves will be mainly trade agreements, what could be called the “EPA process” will definitely be much broader and cover issues linked to development policy and support.
- The trade opening part of these agreements is not at their forefront: it comes towards at the end, after regional integration has kick-started growth, after long transition periods, after Europe has invested aid and support in these least developing countries’ capacity to trade.

Sources: a) The Cape Town Declaration and other official statements published by EPA watch, available online at <http://www.epawatch.net>; b) assessments of negotiations published by Trade Negotiations Insights (TNI), from Doha to Cotonou; available online at <http://www.ictsd.org/tni> and at <http://www.acp-eu-trade.org/news.php>; c) Memo on “Economic Partnership Agreements: putting a rigorous priority on development”, available at http://www.epawatch.net/documents/doc270_4.doc.

1.2 Competitiveness and Equity: ensuring relevant results

Competitiveness and equity goals are repeatedly addressed as priorities for the EPAs in the official texts of the EU and the ACP. These goals should serve as a fundamental guideline in terms of the strategic response to the EPA’s aims agreed by the two parties, and should become a basis for any monitoring of progress in the negotiations:

- EPAs are to facilitate the structural transformation of ACP economies; therefore they should encompass co-ordinated programmes to address the major supply-side constraints which inhibit competitive production of internationally tradable goods and services in ACP countries.⁴
- Trade liberalisation should be co-ordinated with efforts aimed at strengthening the capacities of domestic manufacturing and service sectors, so as to avoid closing-off areas of potential growth and development-oriented structural change in ACPs.
- Equity issues in development – such as poverty alleviation and elimination of gender discrimination in access to economic opportunities – must be simultaneously addressed in many public policy areas, including policies related to enhancing competitiveness.⁵

The priorities mentioned above can only be addressed if a policy package for competitiveness aimed at fulfilling social, economic and environmental goals is implemented. It must constitute a Competitiveness Policy for Sustainable Development, defined as one conducive to:

...“Strengthening and enhancing the production structures, trade capacity and policy institutions of a country, with a view to improving its ability for a positive integration in the global system securing long term, stable economic growth, based in producing goods and services that meet the test of international competition under fair market conditions, while expanding the real incomes and real freedoms of their citizens and using their natural resources and the environment in a sustainable manner, preserving their values for the benefit of present and future generations”⁶...

As the EPA negotiations will eventually reach agreement on rules that may establish limits to the scope of competitiveness policies, careful attention must be given at all stages of the negotiations to guarantee coherence between these rules and the development priorities established for the EPAs. Accordingly, a point of reference is necessary for judging how closely the EPA outcomes will fulfil the priorities of competitiveness and equity. In other words, benchmarks should be defined to monitor the extent to which the outcomes of the EPAs effectively enable ACP countries to undertake reforms and implement competitiveness policies as defined above (see Box 1.2).

⁴ Supply-side constraints in this context include low labour productivity and structural limitations in the institutions to overcome such restrictions (e.g. poor educational and health service systems); limited mastering of management know-how, lack of appropriate process technology and weakness in the national innovation systems; scarcity of input-output linkages between exporting sectors and domestic productive units, mainly SMEs, implying insufficient upstream impacts of job creation and knowledge spillovers; low quality and limited coverage of infrastructural supports resulting in poor connectedness to global markets (poor transportation and access to shipping infrastructure, telecommunications), and inappropriate macroeconomic policy frameworks leading to unstable exchange rates, and high inflation and interest rates.

⁵ This point is elaborated in the study by APRODEV (2002), “EPAs – What’s in it for Women? Women in Zimbabwe: Issues in future trade negotiations with the EU”, Brussels, November 2002.

⁶ This definition has been reproduced from Corrales, W., Sugathan, M., and Primack, D. (2003), “Spaces for Development Policy, revisiting Special and Differential Treatment”. ICTSD, Geneva, May 2003. It results from a joint exercise undertaken by the UNCTAD-UNDP Global Programme and ICTSD in 2003.

Box 1.2: Free Trade Agreements as Enabling Frameworks for the Implementation of Competitiveness Policies for Sustainable Development.

Free Trade Agreements (FTAs), including Agreements on Investment, should not be limited to enhancing market access for developing countries' traditional exports, or improving conditions for FDI flows in sectors of long-established comparative advantages. FTAs should enable developing countries to implement policies aimed at transforming their economic structures, diversifying production and increasing the spillovers that trade expansion may have on the domestic economy. These policies, as a set, constitute *Competitiveness Policies for Sustainable Development*.

Therefore, the enabling effect of FTAs should not only facilitate an appropriate macroeconomic environment, and promote FDI with the expectation that any foreign investment would automatically bring diversification or technological spillovers, but also ensure that developing countries can undertake policy actions directly aimed at:

- Overcoming quality and coverage limitations of infrastructures that result in poor connectiveness to global markets
Relevant examples in the majority of developing countries may be found in poor transportation and access facilities to shipping infrastructure and telecommunications.
- Enhancing the ability of firms and productive chains in general to innovate and incorporate technology
This must be done in a way that facilitates changes in the country's trade specialisation towards value-added goods and services. In addition to gaining effective market access and competing in diversified exports, continuous innovation and adaptation of technology is highly important to sustain productivity and real income growth.
- Building strong and dense fabrics of firms, mainly SMEs, effectively linked to major enterprises and corporations connected to international trade
This is the most effective way for enhancing on a sustainable basis the capacity of the productive sector to create better jobs and to amplify the positive impacts of trade into the domestic economy.
- Implementing specific programmes addressing equity issues in combination with the rest of competitiveness policies
A contribution to the social effectiveness of economic policy in general, and the effective incorporation of objectives related to poverty alleviation and elimination of gender discrimination may require a focused application of trade-related policies for competitiveness. For instance, government procurement preferences and financial support in favour of urban informal sectors and low-productivity rural production (e.g. micro-enterprises, co-operatives and groups of 'poor farmers').
- Mainstreaming environmental goals and criteria as cross-cutting issues in all policies related to competitiveness (horizontal and selective policies).
Policy actions in these directions help ensure sustainability in terms of the intervention of natural resources, and enhance the opportunities for developing countries to successfully compete in world markets that increasingly demand environmental performance.

Source: Adapted from Corrales, W. 2003. 'Ideas for an integrated approach to initiatives related to Competitiveness and Spaces For Development Policies in the road to UNCTAD XI'. Geneva.

Countries that have successfully used trade to promote development have done so by progressively adjusting their production structures, improving their competitiveness by shifting trade specialisation towards higher value-added goods and services, and

purposefully creating dense sets of connections between enterprises. These connections help to sustain growth and are vehicles for positive spillovers to the rest of the economy in the form of more and better jobs and higher domestic income.

1.3 A three dimensional perspective for monitoring the progress of the EPA negotiations in terms of development outcomes

An assessment of progress of the EPAs on development issues was carried out as part of the preparation for this proposal.⁷ The conclusions of the study, highlighting the very poor progress in relation to development issues until 2004, are in stark contrast to the recent statements by Commissioner Mandelson which indicate raised expectations in the treatment of development issues in future negotiations.

The study reveals that only general principles relating to core development issues have been established in the EPA negotiations to date, which are reflected in declaration-type agreements on generalities. However, fundamental disagreements on substantive practical issues remain. In terms of development content and fulfilment of ACP development expectations, so far progress in the EPA negotiations has been mainly formal.

The negotiating approaches by the two parties on the practical integration of the development dimension of the EPAs have diverged widely. Despite official declarations by the EU on the EPAs' development objectives and guidelines supposedly shared with the ACP Group, in practice the negotiating position adopted by the EU until 2004 contradicted such objectives and guidelines.

However, according to Commissioner Mandelson's recent statements

... “[EPAs] should become explicitly what they really are: trade and development tools... I intend this to be a new start for the EPAs – to give the negotiations a new impetus – and to ensure that from now on, until the final implementation of what we will negotiate by 2008, development concerns have pride of place... Therefore, the EPA process will be broader than pure trade arrangements and cover issues linked to development policy and support”⁸...

This paper defines three broad categories of issues in which priorities for a monitoring process of the EPAs should be clearly identified: *market access and fair trade*; *policy spaces*; and *access to resources for development support*. These categories correspond to the dimensions in which trade-supportive policies may be implemented by ACP countries as they address the main development challenges of competing in the global economy.

Market access and fair trade

In terms of *market access and fair trade*, ACP countries would expect the EPAs to provide:

- Effective conditions of asymmetry in the liberalisation process *vis-à-vis* the EU;
- Improved entry to EU markets through traditional mechanisms (involving preferential tariff treatment and resolving problems associated with preference

⁷ See *annex* “Assessing Progress of the EPA Negotiations from a Sustainable Development Perspective”. ICTSD and APRODEV. Brussels, January 2005.

⁸ Peter Mandelson, Speech and Memorandum “Economic Partnership Agreements: putting a rigorous priority on development” delivered in Brussels on 20th January, 2005. http://www.epawatch.net/documents/doc270_4.doc

erosions; rules of origin and the case of ‘residual tariff barriers’ mainly affecting non-LDC ACP countries);

- Improved conditions for the insertion of their commodities exports in the global value chains (GVCs); and
- Solutions to deal with the negative impacts that European trade policies may have on limiting ACP exports (e.g. TBT and SPS; EU Food Safety policy; and anti-dumping and countervailing measures) or the impacts of the EU’s Common Agricultural Policy (CAP) in generating agricultural trade imbalances.

As part of the guiding principles of the EPAs it has been agreed that the eventual agreement on market access arrangements should not leave any ACP state worse off than its current state and that market access arrangements should build on and improve their current positions. These general considerations, however, have yet to become practical instruments.

Policy Space

Issues under the dimension of ‘*policy space*’ (or ‘*space for sustainable development policies*’) encompass flexibilities in trade rules and trade-related disciplines that ACP countries might need in order to implement *Competitiveness Policies for Sustainable Development*⁹ as defined under “Competitiveness and Equity” (See Section 1.2; Box 1.2):

- Some of these policies aim at overcoming supply-side constraints and attaining competitiveness and productive sector development goals (e.g. fostering diversification, enterprise networks and innovative clusters of SMEs; supporting R&D activities; and promoting domestic capacities for exporting high value-added services);
- Others are focused on social objectives and equity goals (e.g. poverty alleviation and reduction of gender gaps, support to poor farmers, micro-enterprises and cooperatives; health-related programmes for HIV/AIDS and other pandemic diseases); and
- A third group corresponds to trade policies aimed at selective import liberalisation and strategic trade integration (e.g. regional integration among developing countries before proceeding to deeper integration with the EU or other countries).

EU resources for development support

Mechanisms in this dimension encompass those ensuring effective access to net financial inflows (resource transfers) from the EU that would contribute to covering the costs of overcoming supply-side constraints, institutional adjustment, technical assistance and capacity building.

⁹ It must be noted that referring to the policy space dimension or the need for flexibilities is not meant to imply a completely open-ended flexibility of ‘policy space’ for ACP countries in all circumstances. Clearly, a balance must be struck between the ‘policy space’ required by each country and the need to maintain the inherent value of a rules-based system, from which all countries would benefit.

1.4 The political basis and scope of a mechanism for continued review of the EPA process

Various EU-ACP Declarations – particularly the Cape Town Declaration – call on both parties in the EPA process to make a commitment to open, transparent and inclusive negotiations, with effective participation by diverse stakeholders. The guidelines aim to guarantee the accountability, political follow-up and scrutiny of the process by means of an on-going monitoring mechanism to be established by the Joint Parliamentary Assembly.

These mechanisms for monitoring the EPA negotiations would ensure that ‘future ACP-EU development, economic co-operation and trade arrangements lay the basis for sustainable development which focuses on reducing poverty, involving the structural transformation of the basis for the integration of ACP economies into the world economy’.

No practical moves or political decisions towards establishing the monitoring mechanisms had taken place until very recently, however, when Commissioner Mandelson announced the decision to set up a mechanism that would monitor the whole EPA process. The idea of reviewing the entire EPA process, including the negotiations and the EPA-related programmes of development assistance would be to guarantee that ‘*the link between trade negotiations and development co-operation is going to work in practice on the ground*’.¹⁰

According to Commissioner Mandelson’s statements, the mechanism would monitor on a publicly available basis, the rollout of EU’s development and trade related assistance, with a view to checking, at regular intervals, whether or not Europe’s assistance is delivering the right results. In his terms, the focus would concentrate on priority areas of competitiveness, private sector development and infrastructure, as well as on institutional capacity building.

The review process would be undertaken in full partnership with the ACP, and Commissioner Mandelson recommended that the ACP and the EU should deal systematically with the development dimension of the EPAs when Ministers meet at political level in the course of the negotiations.

¹⁰ Speech and Memorandum “Economic Partnership Agreements: putting a rigorous priority on development” by EU Trade Commissioner Peter Mandelson, January 20, 2005. Opcit

2. A MONITORING SYSTEM BASED ON DEVELOPMENT BENCHMARKS: A CIVIL SOCIETY PERSPECTIVE.

The case for a set of development benchmarks, which would serve as an instrument for monitoring the EPA negotiations, is put forward below. The monitoring mechanism – as explained above – would be a component of a broader pro-development system for the continued review of the whole EPA process, publicly announced in January 2005 by the EU Trade Commissioner.

The proposals on development benchmarks embody a civil society perspective on the role of international trade agreements as enabling frameworks for the implementation of sustainable development strategies. Competitiveness and equity, priorities politically agreed for the EPAs by the EU and the ACP, constitute the main focus of the benchmarks outlined here.

Various sets of benchmarks for a pro-development monitoring of the EPAs are preliminarily identified in Sections 2.2 through 2.4, using the three-dimensional approach introduced in Section 1 of this paper (i.e. *market access and fair trade; policy spaces; and access to resources for development support*).

The list of benchmarks is non-exhaustive and responds to priorities identified in each of the three dimensions according to two criteria: the development relevance of the issues for ACP countries; and the apparent political will to introduce adjustments in the treatment of development in the EPA negotiations implicit in recent EU statements.

The ideas presented here on particular benchmarks should be considered preliminary. They require further development which should include the involvement of regional stakeholders to ensure that the benchmarks are operational, effective and represent the specific interests and priorities of countries in the different EPA regions.

2.1 A broad view of a monitoring process based on development benchmarks.

To ensure the accountability of the negotiating process, the emerging agreements should be subject to political scrutiny which examines how the trade rules would generate development benefits and conform to the mandates received by the negotiators. The role of a monitoring mechanism in this context would be to provide relevant information thus allowing affected stakeholders to assess the process in terms of competitiveness and equity.

The monitoring mechanism should facilitate looking at development-motivated concerns such as: How are these trade rules affecting the development objectives? ... What effective markets access is achieved? ...Is *policy space* and flexibility increased or curbed by accepting specific conditions in the rules? ... What is the likely impact of a trade-related discipline on employment and equity goals in limiting the application of competitiveness policies? ... To what extent are competitiveness goals and restructuring targets attainable if particular sequencing conditions are accepted for disbursement of development support? ... Do existing impact studies identify the likely development benefits of the EPA negotiations in the various dimensions?

In simple terms, the functioning of a monitoring system based on development benchmarks can be described in four steps:

- Defining priority issues and benchmarks (and updating them periodically if needed, in cycles of perhaps twelve to eighteen months);
- Continuously gathering information from the negotiating groups;
- Processing the information received from the negotiations, assessing progress using the benchmarks and producing reports every three to six months; and
- Disseminating the results of the assessments and facilitating multi-stakeholder dialogues based on the reports.

The first step (defining priority issues and benchmarks) must involve stakeholders from the different EPA regions, in order to guarantee the ‘legitimacy’ of the priorities and the relevance of the benchmarks.

The information gathering can be based on primary and secondary sources – many of them available on the internet¹¹ – if the monitoring mechanism is to be managed by the public institutions of the ACP and/or the EU. If the monitoring mechanism is managed independently, the information gathering process could use secondary sources, validated through selective interviews with negotiators if necessary.

Production of the assessments and reports corresponds to the practical application of the benchmarks to the information flow from the negotiating groups. This task would be the responsibility of the institution(s) managing the monitoring system.

Finally, the fourth step can be undertaken unilaterally (dissemination of results from the assessments) or on an interactive, participatory basis by means of multi-stakeholders dialogues. In addition to those managing the monitoring mechanism, many institutional actors could engage in organising and promoting dialogues based on the reports of the assessments.

The main purpose of this initiative is to stimulate actors participating in the negotiations, as well as members of parliaments and development-concerned communities in the ACP and the EU, to adopt an approach based on development benchmarks for monitoring the EPA negotiations in terms of development goals. A by-product of the initiative could be the use of the development benchmarks in policy dialogues and discussions by parliamentarians, negotiators and affected stakeholders, who have an interest in the same issues.

Whether the monitoring mechanism is implemented by public institutions, or by civil society organisations or independent groups concerned by development issues, it requires development points of reference or benchmarks to respond to development concerns and establish comparisons between objectives and outcomes.

¹¹ Some of the websites with dedicated sections are: <http://www.epawatch.net>; <http://www.acpsec.org/>; http://www.ictsd.org/tni/tni_english/; <http://www.europa.eu.int/comm/trade/issues/bilateral/regions/acp/>; <http://www.comesa.int/trade/multilateral/epa/>; <http://www.acp-eu-trade.org/news.php>; <http://www.stopepa.org/>

2.2 Benchmarks on market access and fair trade¹²

Four broad issues may deserve prioritisation in a monitoring process under the *market access and fair trade* dimension:

- Solving the existing differences about asymmetrical liberalisation in goods and services¹³ and maintaining the ‘Lomé Acquis’, as these matters may become broad systemic obstacles that should be removed in order to enable progress in other areas;
- Effectively improving access of ACP goods to the EU, which may imply focusing the negotiations on rules of origin, SPS & TBT (e.g. issues arising from EU food safety policy) and issues relating to agricultural domestic support and export subsidies derived from the European CAP;
- Facilitating effective support regarding the enhancement of conditions of commodities trade;¹⁴ and
- Obtaining substantial EU market access concessions for ACP service exports, to be implemented right at the beginning of effectiveness of the EPAs. Mode 4 might represent the channel through which ACP countries can gain the most in this regard.

There is reason to be positive about convergence on these issues if the basic ideas included in recent statements issued by Commissioner Mandelson are taken as guidelines by EU negotiators:¹⁵

*...“There will be a high level of asymmetry vis-à-vis the EU in the opening of [ACP] markets.... there is no lobby of EU vested interests clamouring for easier access... ACP regions will open their markets first of all among themselves, building larger regional markets in accordance with their own political objectives and agenda... Only in a second and later phase will the EU pursue the objective of introducing reciprocal access for EU goods or services”...
...“The CAP reform has provided a viable framework for restructuring agriculture in the EU, making our policies much less trade distorting. ...Access for ACP agricultural products to the EU market and export competition, however, will be fully addressed within the EPA negotiations”...*

Box 2.1 shows an illustrative list of ideas on benchmarks for market access and fair trade. Benchmarks on ‘horizontal issues’ are identified in relation to asymmetrical liberalisation and rules of origin, while benchmarks on sectoral matters are illustrated for agriculture and commodities, as well as for trade in services.

¹² Under the *market access and fair trade* dimension developing countries seek improved market access and solutions to the negative impacts that other countries’ trade policies may have on limiting their exports.

¹³ The issue of asymmetrical liberalisation has become highly contentious as the EU has maintained that an EPA must be essentially a free trade area agreement subject to WTO rules, and have often stressed that ‘substantially all trade’ has to cover as much as 90% of current imports and exports. Opening of ACP trade in services has also become part of the issue.

¹⁴ Commodities issues affect all EPA regions, particularly countries in the ESA. 15% of their exports to Europe correspond to commodities, with 7 of the 16 countries depending on basic commodities for more than 25% of their exports to the EU. Price reductions in six commodities from this region averaged more than 50% between 1995 and 2002.

¹⁵ Speech and Memorandum on “Economic Partnership Agreements” issued by EU Trade Commissioner Mandelson; *opcit.*

Box 2.1:**Selected Benchmarks on Market Access and Fair Trade**

Benchmarks must be derived from agreed EPA guidelines and should represent the priorities defined under the market access and fair trade dimension (see main text). They should be considered 'moving targets' that outcomes of the negotiations move towards. The illustrative list below shows how benchmarks can be applied to issues affecting all trade as well those issues that are mainly sectoral.

Selected Benchmarks on issues affecting trade in general.

- On asymmetrical liberalisation

Progress in negotiations should effectively pursue 'a high level of asymmetry vis-à-vis the EU and allowing ACP regions to open their markets first of all among themselves'. The phasing-out of ACP tariffs should be linked to the attainment of pre-defined development indicators and not to pre-determined timetables.

- On rules of origin

To effectively favour regional integration while facilitating ACP incorporation to global markets, rules of origin should recognise the increasingly global nature of input procurement (non-originating raw materials) while still allowing substantive value addition to take place in ACP countries.

Selected Benchmarks on issues affecting Agriculture and Commodities

- On impacts originating from the CAP reform and SPS issues derived from the EU Food Safety Policy

Positive progress on the negotiations could be linked to the opening of a dialogue which explores the options for: i) addressing the trade consequences of new forms of CAP distortions linked to its new instruments and export refunds; ii) establishing new arrangements in order to maintain the value of the *acquis*, potentially undermined by the CAP reform; and iii) meeting genuine EU health concerns without placing undue burdens on ACP exporters.

- On commodities

Positive progress regarding the issue of declining prices of commodities implies making operational the EU Commodities Action Plan launched in February 2004, including ensuring sufficient deployment of resources.

Select Benchmarks on issues affecting trade in services

- On movement of natural persons (Mode IV)

Positive progress could be linked to: i) more liberal conditions in general (e.g. an ACP business travel card; facilitation of the recognition of professional credentials); ii) a relevant reduction of restrictions (e.g. economic-needs test; diploma requirements; linking movements of short-term workers to commercial presence of ACP firms; certification of profession and employment contracts with authorised enterprises in the case of recreational and cultural services).

- On expanding opportunities for service exports in other modes of supply

Favouring the expansion of opportunities would imply: i) removing restrictions in health services in mode III (economic-needs test) or including it as committed sectors (as many EU health sectors are unbound or uncommitted); and ii) additional funds with rapid and flexible disbursement procedures to support ACP service sector development.

2.3 Benchmarks on policy spaces¹⁶: flexibility on policy issues related to competitiveness and supply-side constraints

It has been repeatedly confirmed that competitiveness and equity goals constitute the most important ambitions of the EPA process. Therefore, utmost political attention should be given to the risks involved in negotiating trade-related disciplines that might hinder the capacity of ACP countries to implement policies in these areas. Any monitoring process in this regard should be supported by benchmarks to help guarantee that ACP countries would be enabled to undertake reforms and implement policies targeted at competitiveness and equity. (See Section 1.2 and Box 1.2, on *Competitiveness Policies for Sustainable Development*.)

The use of four classes of policy instrument, which may be necessary for the implementation of these kinds of policies, might be at stake in the EPA negotiations. Instruments in the first class are linked to trade rules, while mechanisms in the other three belong to ‘trade-related disciplines’:¹⁷

- Border measures (e.g. tariffs, rules of origin and market defence mechanisms) aimed at protecting domestic or regional production under specific development circumstances (e.g. limiting the negative impacts of the EU CAP reform),¹⁸ and/or promoting regional integration;
- Mechanisms providing incentives to firms or conditioning their economic performance towards contributing to goals on diversification, SME clusters development, technology upgrading and technology transfer; export service development among others;¹⁹
- Preferences in procurement regimes of government agencies and state-owned enterprises oriented to the same kinds of policy goals and to supporting equity-focused programmes; and
- Flexibilities in the implementation of other trade-related disciplines (e.g. flexibilities in intellectual property rights disciplines, related to public health policy goals).

Only a limited number of these mechanisms are currently restricted by WTO rules, while minimisation of flexibilities or *policy spaces* regarding most of them was unsuccessfully

¹⁶ Under the *policy space* dimension developing countries implement actions aimed at diverse competitiveness-related goals (e.g. overcoming supply-side constraints and promoting diversification; supporting micro-enterprises and co-operatives as part of equity-focused programmes; selective import liberalisation and strategic trade integration).

¹⁷ The Cotonou Agreement contains provisions on a range of trade-related areas, with the EU committing itself to assisting ACP countries in strengthening their regulatory frameworks with regard to: competition policy; intellectual property rights; standardisation and certification; sanitary and phytosanitary standards; trade and environmental issues; labour standards and consumer policy.

¹⁸ Simple value-added products from the EU are invading ACP markets fuelled by the process of EU CAP reform (e.g. exports of ‘products of the milling industry’ increased in value terms in 83% between 1996 and 2002, while exports of ‘preparation of cereals’ increased by 163%. Massive export of frozen chicken to West Africa is another example on how import surges have already destroyed local markets even without involving major subsidies: premium parts – mainly chicken – generate the profits for EU producers and they can afford to ‘dump’ all other parts elsewhere at very low cost on the basis that any income from this practice is a bonus. This kind of trade potentially has the capacity to undermine the basis for agriculture-based industrial development in West and Southern Africa, with serious social consequences.

¹⁹ Examples among these mechanisms are incentives (some of them could be technically considered to be subsidies although they do not necessarily involve government disbursements) and incentive-based performance requirements (only a few of them are prohibited in the TRIMs Agreement of WTO); and the use of conditionalities for promoting domestic export capacities in service sectors. See Corrales, W., Sugathan, M., and Primack, D. (May 2003) “Spaces for Development Policy, revisiting Special and Differential Treatment”. ICTSD, Geneva.

proposed by some developed countries – the EU among them – in the failed ‘Singapore Issues’. Within the EPA negotiations, however, the EU has emphasised that the EPAs must address ‘trade-related issues’ covering Investment, Government Procurement, Competition and Trade Facilitation, as these are considered essential tools for development.

Box 2.2 presents a broad view of benchmarks that could be used in monitoring the EPA negotiations in relation to policies targeting competitiveness and supply-side constraints. Many of the rules involved belong to the categories of ‘trade-related disciplines’.

Box 2.2:

Selected Benchmarks on Policy Spaces: Competitiveness and Supply-Side Constraints

Benchmarks must be derived from agreed EPA guidelines and should represent the priorities defined in the *policy space* dimension (see main text). Benchmarks in this area involve guiding principles, as well as ‘points of reference’ for negotiations on sectors and specific rules. The latter should be considered ‘moving targets’ which the outcomes of the negotiations should move towards. The use of supply-side policy instruments is generally associated with complementary financial support, for which benchmarks are defined in Box 2.3 (e.g. additional EU development support related to service sector development and institutional capacity building in policy implementation and follow-up).

Guiding principles for the negotiations

- On the right to implement policies for competitiveness and productive sector development
A clear recognition of the right of ACP countries to implement these kinds of policies under any framework of trade rules or trade-related disciplines should be a pre-condition for considering negotiations on disciplines potentially hindering such capacities.
- On coverage and scope of commitments in trade-related disciplines
The coverage and the eventual timeframes for implementing agreements on trade-related disciplines should be limited to those where ACP countries have the necessary expertise or can develop the capabilities needed by making use of additional development support from the EU. The scope of commitments should be subject in principle to those agreed in WTO.

Selected Benchmarks affecting food production and exports: Agriculture and Fisheries

- On impacts originating in the process of EU CAP reform
Positive outcomes should be associated with addressing in an effective manner the potential negative impacts of the CAP reform on the prospects of agriculture-based industrial development in ACP countries. (Tariff levels, safeguards and exclusion of ‘sensitive products’ from the EPAs).
- On Fisheries
A balanced outcome of the negotiations supporting ACP fisheries sector development should imply agreeing on fundamental principles in relation to sustainable fisheries management, obligatory landings and other measures ensuring that ACP countries maximise the long term benefits of their resources.

Selected Benchmarks on issues affecting Manufacturing and Service sectors

Pro-development progress in the negotiations implies agreeing on i) home country measures in the EU to increase technology transfer to the ACP service sectors, and ii) flexibilities in rules for the application of supply-side instruments (e.g. conditioned incentives and performance requirements; public procurement preferences; IPRs flexibilities; domestic regulations in services) to support goals related to diversification; development of domestic capacities in service sectors; SME development and clustering; programmes focused on productivity in informal activities and poor farmers; technological upgrading of firms and strengthening of innovation systems.

Recent declarations of Commissioner Mandelson have confirmed the strong position of the EU regarding the inclusion of trade-related disciplines in the EPAs:

... “We recognise the concern among NGOs that the EU is “trying to reintroduce the so-called Singapore issues by the back door”. However everyone should acknowledge that investment, public procurement and competition policy are essential parts of successful economic governance...The EU’s aim is that EPAs offer a framework where these important issues can be addressed in a development friendly way and only as, with our assistance, the capacity of the ACPs itself grows to deal with them in a meaningful way”²⁰...

Due to these concerns, negotiations in this area may become very difficult, as it would not be easy to reconcile the *policy space* needed by the ACP with the implementation of disciplines that may constitute *per se* a reduction of such space.

Recognition of the right of ACP countries to implement policies aimed at development goals on competitiveness and equity would seem necessary from the outset if development concerns are to be placed at the centre of the negotiations.

2.4 Benchmarks on resources for development support

The effectiveness of adjustment programmes associated with the process of trade liberalisation with the EU, as well as the success of policies for improving competitiveness and overcoming supply-side constraints (see 2.4), are linked to the availability of resources for development support.

Two broad issues in this dimension deserve prioritisation in any review mechanism of the EPA process, given the problems that apparently occur in accessing existing resources, as well as the current deadlock and the new paths that negotiations would probably take in this area. The first is related to monitoring the course of negotiations in the *resources for development support* dimension and the second is linked to real access and administration of the resources available.

- Negotiating access to additional EU resources needed for adjustment and overcoming supply-side constraints; and
- Agreeing criteria for rationalising the use of EU resources already available for development support and for simplifying and speeding-up the procedures for aid deployment.

Despite the apparent changes that have occurred since Commissioner Mandelson took office regarding the scope of the EPAs (i.e. if the EPAs should cover financial assistance or trade and trade-related measures only), what the EU may be prepared to concede in additional resources seems to depend on first using the available resources up to their limit. Commissioner Mandelson’s priorities and conditions on development support were explained in the following terms, in his recent statement:

...“Our main priority will be to make sure that the financial envelopes available under the Cotonou agreement will be used up to their limit, in support of the capacity building and support that ACP countries need... It is about delivering in practice on the ground by getting

²⁰ Speech and Memorandum on “Economic Partnership Agreements” issued by Commissioner Peter Mandelson; opcit.

the most out of our existing development tools... This will require a greater focus on priority areas in our assistance: on competitiveness and diversification programmes linked to the EPA, including private sector development and infrastructure, as well as on institutional capacity building.

Box 2.3 shows a limited number of initial ideas on benchmarks for monitoring negotiations related to EU resources for development support.

Box 2.3:

Selected Benchmarks on Resources for Development Support

Benchmarks must be derived from agreed EPA guidelines and should represent the priorities defined under the resources for development support dimension (see main text). Benchmarks in this area involve guiding principles and general criteria, as well as 'points of reference' for development support aimed at specific sectors' adjustment programmes, supply-side policies and institutional capacity building.

Guiding principles and general criteria

- Comprehensiveness of development support and access to resources

A comprehensive approach is necessary to define the development support needed in the adjustment processes associated with phasing in free trade with the EU. Therefore the EPA negotiations should give rise to specific instruments and programmes with additional resources, addressing the challenges that arise from the adjustment; i.e. the issues of fiscal and economic restructuring, and social programmes. At the same time, criteria and guidelines for rationalising the use of funds, both existing and additional, should be agreed as to avoid diverting financial resources away from pre-existing legitimate priorities and to ensure that funds can be spent swiftly and effectively.

- Sequencing of liberalisation and restructuring programmes

Restructuring assistance should be made available and programmes implemented before free trade is fully introduced, so that ACP economies are equipped to meet the challenges posed by moves towards free trade with the EU (see examples in specific sectors below).

Illustrative Benchmarks on issues affecting specific sectors

- On Agriculture and Commodities

Over a short period of time, progress should be achieved in i) extending and deepening technical assistance programmes referred to SPS issues, and ii) addressing commodities issues before the impact of free trade with the EU is realised in its entire dimension. This implies putting in place Processing, Marketing, Distribution and Transport (PMDT) programmes before the phasing in of free trade, and immediately starting a comprehensive implementation of the EU Commodities Action Plan.

- On Services

A comprehensive strategy for ACP service sector development must be put in place in terms of market access measures and supply-side policies (see Boxes 2.1 and 2.2). The potential success of this strategy would depend on making available additional resources with rapid and flexible deployment procedures.

ANNEX

Assessing Progress of the EPA Negotiations from a Sustainable Development Perspective

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BACKGROUND

The African Caribbean and Pacific (ACP)²¹ group of states face trade negotiations over the next years on the Economic Partnership Agreements (EPAs) with the EU under the Cotonou Agreement. A clear and positive link between development strategies and the new trade rules to be generated in these negotiations has still to be developed in practical terms.

This Annex presents the results of a development-oriented assessment of the objectives of the EPAs and the progress attained so far in the negotiations, undertaken by ICTSD in December 2004 and January 2005. The study aims to support the process of defining objectives and strategies that would serve as guiding principles for a Programme on Development Benchmarks for monitoring the EPA negotiations.

The assessment was prepared under the “*Building a Trade and Sustainable Development Agenda*” and the “*Africa Trade Programme*” initiatives of ICTSD. It draws extensively from papers, articles and strategic reports on the EPA process published in Trade Negotiation Insights (TNI)²², a joint publication of ICTSD and the European Centre for Development Policy Management (ECDPM). The sources are based either on analyses undertaken by the ICTSD’s experts or studies published in TNI by other authors.

After a first phase of negotiations, each of the six ACP regional blocs, starting with Western and Central Africa in October 2003, have now commenced the second phase of negotiations with the European Union (EU) – a process which is set to run through to 2005. Road maps have been agreed between specific regions and the EU, detailing ‘priority areas’ as well as negotiating structures and schedules.

In terms of development content, little substantive progress has been achieved in the negotiations due the widely differing approaches of the two parties on how to integrate the development dimension of EPAs in practice. The remainder of this Annex summarises the practical results attained in relation to the development interests of the ACP. These results are in marked contrast to the official declarations by the EU and the ACP on shared objectives and negotiation guidelines on sustainable development, competitiveness enhancement and poverty alleviation, as well as on asymmetrical liberalisation and EU assistance for structural transformation of ACP economies.

²¹ The six ACP regions are Central Africa (CEMAC), West Africa (ECOWAS), Eastern and Southern Africa (ESA), the Caribbean, the Southern African Development Community (SADC) and the Pacific.

²² Trade Negotiations Insights (TNI), from Doha to Cotonou; available online at <http://www.ictsd.org/tni> and at <http://www.acp-eu-trade.org/news.php>.

1. ACP COUNTRIES' DEVELOPMENT AND CAPABILITIES: HOW SHOULD NEGOTIATIONS ADDRESS THE EPA OBJECTIVES?

Since the EU's initial proposal in 1996 to negotiate EPAs with ACP regional groupings, all parties have stressed the necessity for these new trade arrangements to provide fresh impetus to the sustainable development of ACPs; EPAs should not be standard reciprocal free trade agreements (FTAs), but rather they should constitute 'tools for development'. This ultimate objective was reaffirmed in the Cotonou Agreement and in numerous declarations since, including the Cape Town Declaration²³, the EPA negotiating mandate, and in the guidelines of the EU and the ACP.

Development motivated objectives and guidelines can also be recognised in ideas expressed by high officials of the EU responsible for Free Trade Agreements: The EPAs should be used for fostering competitiveness improvements and facilitating development-oriented adjustments in ACP country structures; they should not be subordinated to progress in the Doha Development Agenda of WTO; and they should be supported by development-targeted funds and by efforts to attract private capitals to ACP countries:²⁴

...."The EPA process is aimed at defining new development friendly rules of trading between the ACP and the EU.... In market access, the aim is to maintain and where possible, increase the element of preference.... In agriculture, beyond market access, we should also be willing to discuss export refunds without necessarily waiting for an all inclusive WTO solution... In services, we should focus on the real needs and aspiration of the respective EPA regions and build a competitive economy"... "We know that public support will be an element in the structure adjustments necessary for development. The European Development Fund (EDF) is geared towards supporting our efforts. We should not, however, make the mistake of only looking at public finance. We need to attract private capitals - both local and foreign. This can be done through EPAs, we hope, because we can define more transparent, more stable conditions that would be laid down in international agreements between the respective regions and the EU."

The Cape Town Declaration introduces the values of political accountability to the negotiations as measured against sustainable development benchmarks, when it calls for a transparent process and for appropriate monitoring mechanisms to ensure that wider human development objectives are fully taken into account. The inclusion of non-state actors in the process is an additional innovation in the Declaration, which recognises the need to engage all bodies in the ACP and EU concerned with promoting sustainable development.

²³ At the 4th ACP/EU Joint Parliamentary Assembly in Cape Town, South Africa, from 18 to 21 March 2002, a Declaration on the EPA negotiations was issued. The Declaration, initiated by the ACP members of the Joint Parliamentary Assembly seeks to establish benchmarks against which the process of negotiations can be assessed.

²⁴ Karl Friedrich Falkenberg, Director, EC Trade Directory General, Trade Directory C – Free Trade Agreements. "EPAs and DDA – Parallelism or Cross Roads? In TNI Vol. 3 No 4, July 2004. <http://www.ictsd.org/tni>.

1.1 Formal agreements on development objectives and guiding principles of the EPA negotiations

Official declarations by the EU and the ACP on objectives and negotiation guidelines for the EPAs show fundamental agreement over sustainable development goals, competitiveness enhancement and poverty alleviation objectives, and on the principles of asymmetrical liberalisation and EU assistance for structural transformation of ACP economies.

Sustainable development: aims apparently shared.

The following two objectives summarise the main goals established for the EPA negotiations in the Cape Town Declaration, and other political statements issued by the EU and ACP states:

- To promote sustainable human development, a process whose outcomes should be expressed not only in economic terms, but also in the social and political dimensions of development, such that equity goals (e.g. reduction of poverty and gender gaps) remain at the forefront of trade negotiations; as well as the recognition of the need to include a broad range of non-state actors in active discussion of future trade policy options; and
- To improve the level of productivity and the range of value-added products of ACP economies; and foster their structural transformation so that their production systems shift away from extreme dependency on basic commodities with stagnant or declining price, towards the production of goods and services with higher demand growth and favourable price trends.

Guiding principles for the EPA negotiations.

Several principles have also been declared by the two parties as guidelines for the negotiations:

- Ensuring that no ACP country is left worse off in terms of conditions of access to the EU market than under the current trade arrangements;
- The recognition that trade liberalisation – in particular tariff reductions – should occur on an asymmetrical basis²⁵ in order to ease or avoid economic difficulties for the less developed partners. In the case of LDCs (which make up 60 percent of the ACP population) this entails respecting the right to continued non-reciprocal trade preferences;
- The need for wide-ranging and effective programmes to address the supply-side constraints of ACP economies;
- Addressing comprehensively the external effects that the EU's Common Agricultural Policy (CAP) might have on the ACP economies; and

²⁵ This asymmetry should be expressed in the timing of the reduction and elimination of tariffs, and/or in the extent of total trade to be included.

- The importance of extending direct and effective assistance to fiscal restructuring in those ACP countries that depend heavily on customs revenues generated from trade with the EU.

1.2 *A declared focus on competitiveness and equity*

In official texts of economic and political character – not only in inter-parliamentary declarations – competitiveness defined in sustainable development terms is repeatedly addressed. This fact should be interpreted as a fundamental guideline in terms of a strategy responding to the aims of an EPA agreed by two parties:

- EPAs are to facilitate the structural transformation of ACP economies; therefore they should encompass (or be accompanied by) co-ordinated and integrated programmes to address the major supply-side constraints which inhibit the competitive production of internationally tradable goods and services in ACP countries.²⁶ This calls for a review of existing institutional arrangements for extending assistance to address supply-side constraints, including policies aimed at productive sector development and competitiveness;
- Equity issues of development – such as poverty alleviation and elimination of gender discrimination in access to economic opportunities – must be simultaneously addressed in many public policy areas including in the conception and follow-up of competitiveness policies. This calls for the establishment of programmes designed to enhance SME networks that multiply job creation, as well as addressing supply-side constraints which are gender-sensitive in a way that seeks to systematically improve women's access to economic resources.
- While addressing supply-side constraints, account will have to be taken of the effects of the implementation of reciprocities in market access, and the impacts of introducing rigidities in trade rules that may negatively affect strategies aimed at strengthening the capacities of domestic manufacturing and service sectors. This is to avoid the closing-off of areas of potential growth and development-oriented structural change.

In particular the value of service sector development and the need for fostering ACP country capacities for exporting services *within the context* of EPAs are frequently recognised. For instance, in the EU and the ACP agreement to extend their partnership to encompass the liberalisation of services in accordance with the provisions of GATS, or through the reaffirmation of GATS commitments and the emphasis given to strengthening the ACP supply capacity of services and the need for S&DT for ACP services suppliers.²⁷

The EU agrees that the ACP countries should be placed under no fixed obligation to liberalise services, but believes that it is in their best interests to do so.

²⁶ Supply-side constraints in this context include low labour productivity and structural limitations to overcome such situation (e.g. poor educational and health service systems); poor mastery of management know-how, lack of appropriate process technology and weakness in the national innovation systems; scarcity of input-output linkages between exporting sectors and domestic productive units, mainly SMEs, implying insufficient upstream impacts of foreign trade (job creation and knowledge spillovers); low quality and limited coverage of infrastructural supports resulting in poor connectedness to global markets (poor transportation and access to shipping infrastructure, telecommunications), and inappropriate macroeconomic policy frameworks leading to unstable exchange rates and high inflation and interest rates.

²⁷ Dirk Willem Te Velde, "Special and Differential Treatment in Post-Cotonou Services Negotiations" TNI Vol. 3 No 3, May 2004. <http://www.ictsd.org/tni>

1.3 Accountability and relative negotiating capacities: requisites for a balanced outcome

Two issues merit special attention in negotiations involving countries with highly different economic leverage and institutional strength, as they may influence the prospects of a balanced outcome.

The first is the relative negotiating capacity of the parties, in which an effort must be made to “level the playing field”.

The second relates to the governance of the negotiating process, which involves promoting transparency and the effective participation diverse stakeholders, and guaranteeing the accountability, political follow-up and scrutiny of the process by means of on-going monitoring mechanisms.

On the topic of negotiating capacities of the ACP states three conditions are highly important. The first refers to planning and implementing the process in a manner allowing ACP countries to optimise the use of their limited institutional mechanisms and human resources;²⁸ the second is related to making financial resources available so that ACP negotiators and policy analysts receive capacity building support from independent sources; and the third is ensuring that ACP countries have timely access to relevant information, including assessments on the development impacts of the EPAs.

Regarding governance, various EU-ACP Declarations – particularly the Cape Town Declaration – call for both parties to make a commitment to open, transparent and inclusive negotiation processes which include the effective participation in which the effective participation of diverse stakeholders. In addition, the guidelines aim to guarantee the accountability, political follow-up and scrutiny of the process by means of on-going monitoring mechanisms that would be set up by the Joint Parliamentary Assembly.²⁹

In practical terms resources have been allocated to undertake impact assessments and capacity building programmes, but no specific guidelines with a development focus are identified in the Cape Town Declaration or other official documents.

²⁸ The Cape Town Declaration deals with this matter by means of general considerations about the fact that carefully planning a structured process of negotiations – in terms of agendas and timeframes – would allow the smaller countries to deal in parallel with trade negotiations at the regional, multilateral and inter-regional levels. In general such structured process would permit the ACP countries to make use of the collective expertise of the Group and to bring all concerned stakeholders into trade policy debates, so as to systematically address the key issues and ensure that clear assessments can be made of the likely impact of specific trade measures on relevant sectors in their economies.

²⁹ These mechanisms would be geared towards ensuring that the EPA negotiations effectively pursue the objectives and follow the guidelines summarised in previous paragraphs (e.g. that “future ACP-EU development, economic co-operation and trade arrangements lay the basis for sustainable development which focuses on reducing poverty, involving the structural transformation of the basis for the integration of ACP economies into the world economy”).

2. A REALITY CHECK: CURRENT ACHIEVEMENTS AND EXPECTATIONS ON DEVELOPMENT ISSUES IN THE EPA NEGOTIATIONS

In terms of development content and fulfilment of ACP development expectations, progress attained in the EPA negotiations has been so far mainly formal, expressed in declarations-type accords with very little practical value, and disagreement on most potentially useful matters. The negotiating approaches of the two parties on how to integrate the development dimension of EPAs in practice have diverged widely.

Notwithstanding official declarations by the EU on EPAs development objectives and guidelines supposedly shared with the ACP Group (e.g. on sustainable development, competitiveness enhancement and poverty alleviation, as well as on asymmetrical liberalisation and EU assistance for structural transformation of ACP economies), in practice the negotiating position adopted by the EU has contradicted such objectives and guidelines.

In negotiating terms the EU maintains that an EPA is essentially a free trade agreement which must abide by WTO rules on free trade areas. ACP states insist that if EPAs are to be development tools they cannot simply be free trade area agreements, but must include concrete measures to promote the structural transformation of ACP economies aimed at producing a higher proportion of value-added goods and services and reducing their extreme dependence on exports of basic commodities.

Development objectives have been elusive so far, but opportunities may exist for successfully influencing development-motivated EU actors so that a more development-oriented path in EPA negotiations is regained. Clear contradictions are present between guidelines issued by EU political bodies and EU negotiating positions, and it is possible that even within the executive branch these contradictions might exist and remain to be resolved.

2.1 Core development issues: negotiations seem to evolve without convergence

Only general principles relating to core development issues have been discussed to date. These are reflected in declaration-type agreements on generalities, but fundamental disagreements exist on more substantive and practical issues.

For instance, based on the officially shared idea that EPAs should be a means of achieving wider objectives and not ends in themselves, parties concur on the general statement that EPAs should contribute directly to the development of ACP countries through supporting the development of ACP productive sectors and the regional integration processes in which ACP countries participate.

Agreement seems also to exist on the principle of taking into account the capacity of ACP economies to adjust to the introduction of free trade with the EU and to accompany EPAs with appropriate development support measures so as to enable ACP countries to maximise the benefits they gain from the Agreements. These basic ideas have served as a framework for the assertion that EPAs should be mainstreamed into ACP policies and EU development co-operation programmes, accompanied by general capacity building measures.

The EU's current approach to commodity questions has also been brought to the attention of ACP negotiators in a very general manner, as an example of "positive ways" that could

be explored together in order to give appropriate solutions to one of the issues that most limits the opportunities of ACP countries for obtaining benefits from trade liberalisation.

However, beyond these general statements there seems to be little agreement when it comes to concrete policy initiatives, sequencing of policy changes and development support programmes envisaged or under discussion.

On the character of EPAs as development tools or Free Trade Agreements

The issue of asymmetrical liberalisation – including in practical terms the timeframe within which ACP countries should dismantle tariffs under an EPA agreement – has become highly contentious. This is in spite of “officially shared views”, as the EU maintains in negotiations that an EPA must be essentially a free trade area agreement subject to WTO rules on the matter, often expressed as ‘substantially all trade’, covering as much as 90 percent of current imports and exports.³⁰

The ACP Group has decided to address this issue at the ‘all-ACP level’, and more importantly within ongoing WTO talks, as Article XXIV of the GATT on regional trade agreements³¹ is not flexible enough to ensure that EPAs reflect the inequality of the partnership with the EU. To this end, in April 2004, the ACP submitted a proposal to the WTO calling for the amendment of this provision to include appropriate special and differential treatment (S&DT) mechanisms in favour of developing countries.

Given the different levels of economic development of EU and ACP economies, ACP countries fear that the implementation of these free trade-only EPAs could profoundly undermine their economic development possibilities and contribute to increasing poverty, as local industries collapse under pressure from competition from imported EU goods.

Finally, the opening-up of ACP trade in services in the context of EPA negotiations should also be considered part of the asymmetric trade liberalisation issue. In addition to maintaining policy spaces that ACP countries would need for successfully promoting domestic capacities in service sectors’ exports, a development-oriented strategy for trade liberalisation in services should consider a progression in which full liberalisation should occur first among countries within the same EPA region, then among countries across the EPA regions and finally with the EU.

On legal instruments affecting core development issues

Other matters of divergence that could be considered ‘core development issues’ are related to legal frameworks; such legal structures should guarantee developing countries the stability of their rights and predictability of outcomes in regard to development-sensitive political issues.

³⁰ In terms of ACP countries further opening-up to imports of EU products, the basic EU demand is likely to be the reduction of ACP applied tariffs to zero over a transitional period of 10-12 years, starting in 2008. An analysis of what the appropriate ACP response to this demand should be requires a review of what tariff barriers are now, how much movement is required to achieve the target and what are the likely costs of adjustment, particularly in terms of fiscal revenue loss and de-industrialisation.

³¹ According to the EU an EPA based on WTO rules must involve: a) the elimination of import duties and all taxes having an equivalent effect on “substantially all trade” between the countries which sign the agreement; b) be fully in place within a 10 to 12 year transition period; c) exclude no economic sector from the coverage of the free trade area; and d) include agreements on trade in services and trade-related areas.

One example of the divergence on these legal-development issues relates to the binding nature of outcomes from the first phase of negotiation. While the ACP States have maintained that the first phase should result in a legally-binding agreement on various issues of common interest, the EU was of view that this phase should be used for clarification, with no need for a binding outcome. In the end, ACP ministers agreed to continue discussions with the EU on these difficult issues as a group, at an 'all-ACP level', alongside region-specific negotiations.

A second example can be found in the rules that govern the settlement of disputes under EPAs and the inclusion of a 'non-execution clause' in EPAs – whereby 'appropriate measures' including suspension as a last resort, would be used against a party that breached any of the core principle of the partnership such as human rights, democratic principles and the rule of law.

2.2 The issues of market access and fair trade for ACP products

In terms of market access, ACP countries would expect the EPAs to improve entry to EU markets in three complementary ways: traditional mechanisms (e.g. preferential tariff treatment and preference erosions, rules of origin and the case of 'residual tariff barriers' mainly affecting non-LDC ACP countries); improved conditions of insertion of their commodities exports into global value chains (GVCs); and solutions to the negative impacts that European trade policies may have on limiting their exports (e.g. TBT and SPS; EU Food Safety policy; and anti-dumping and countervailing measures) or the impacts that the EU's Common Agricultural Policy (CAP) would generate in their agricultural trade balances.

As part of the guiding principles of the EPAs it has been agreed that once concluded market access arrangements should not leave any ACP state worse off than is currently the case, and market access arrangements should build on and improve the current *acquis*; it is also agreed that all EPAs should incorporate appropriate safeguard provisions.³² These general considerations still have to become practical instruments in several issues of key interest to ACP countries.

The CAP, through bringing down EU agricultural market prices, is making the EU market less attractive for basic temperate agricultural exports from ACP countries; and simultaneously enhancing the price competitiveness of EU exports to ACP markets.³³

Judging from the results of the first phase, addressing issues relating to EU SPS and TBT standards and preference erosion could be sticking points in negotiations on agriculture and fisheries. According to the ACP, maintaining the status quo under the Lomé arrangements – the so called 'Lomé Acquis' – should be a paramount consideration in this area. Given that the Lomé Acquis was based on non-reciprocity, this goal could be a challenge.

³² Nonetheless, there is as yet no agreement on the nature and scope of such safeguards (for example, can they be pre-emptive, involving the monitoring and surveillance of trade in sensitive products and allow for swift and effective measures should a potential threat of market disruption emerge?)

³³ The CAP, through bringing down EU agricultural market prices, is making the EU market less attractive for basic temperate agricultural exports from ACP countries, and simultaneously enhancing the price competitiveness of EU exports to ACP markets. If the EU reduces the internal sugar price by 40 percent as envisaged in one of the scenarios set out in the EU paper on sugar sector reform, this will result in annual income losses to ACP sugar exporters of around 390 million Euros per annum.

Where agriculture is concerned, most ACP regions are undertaking Sustainability Impact Assessments (SIAs) which examine the impact of EPAs on agriculture. Within the context of this exercise, some have indicated difficulty, in terms of data availability and appropriate methodology, of identifying 'sensitive products' that would need to be excluded from the EPAs. Given the fact that developing countries have the space to exclude similar 'special products' from agriculture talks in the Doha negotiations, this could be a chance for ACP countries to establish the elements of such 'special products' at the national and then regional levels, that will then feed into multilateral trade talks.³⁴

In all ACP regions, in-depth negotiations on key areas of market access for industrial and agricultural products have been postponed to 2006 to enable the ACP to give priority to regional integration initiatives. On other matters, divergent views have emerged from the first phase on how to address rules of origin, and the EU's Sanitary and Phytosanitary measures (SPS) and technical barriers to trade (TBT).

More recently, the ACP countries have also called attention to the problem of preference erosion at the all-ACP level of negotiations. At a joint ACP-EU Ministerial Trade Committee on 27 October 2004, the ACP sought assurances from the EU regarding the erosion of their preferences due to the impact of the EU's new reform proposals on sugar, bananas and textiles.

The former EU Trade Commissioner, Pascal Lamy, stressed that "whatever the results, the EU will be able to help countries benefiting from the sugar protocol when faced with the adjustment process at [new EU] reduced prices." Similar vague assurances were given on textiles and bananas.

Experts suggest that the simplest way to fulfil the commitment of "improving the current market access conditions" of ACP exports to the EU is to provide all ACP countries with duty-free and quota-free access for all exports. However, ACP countries which have benefited from commodity protocols will be confronted with serious adjustment costs if this is done. Hence, appropriate assistance from development-motivated institutions may be required.

To effectively improve market access to the EU, it seems necessary to negotiate a radical simplification to the rules of origin associated with preferences in the context of the EPAs, as well as to place issues relating to agricultural domestic support and export subsidies, SPS measures and non-competitive commodity market structures at the centre of the EPA negotiations.

With respect to trade in services, ACP countries should negotiate substantial EU market access concessions to be implemented as soon as the EPAs become effective. Mode 4 (on the temporary movement of natural persons in GATS, covering all skill levels and professional and industrial services-provision categories) might represent the route through which these countries can gain the most in relation to Service Market Access in the EU.

³⁴ These concerns were noted by various EPA negotiators and consultants at a workshop on "Methodologies for Assessing the Impact of Economic Partnership Agreements for African Economies" organised by the Friedrich Ebert Stiftung Foundation (FES) in Geneva on 27 – 30 September 2004.

2.3 Trade-related issues: Policy Spaces at stake

Policy Space issues encompass all flexibilities in trade rules that ACP countries might need in order to implement specific development policies. They include policies directly related to social concerns (e.g. poverty alleviation; supports to poor farmers and public health programmes implying HIV and other pandemic diseases), as well as supply-side policies related to competitiveness and productive sector development (e.g. fostering diversification, enterprise networks and innovative clusters and supporting R&D activities; promoting domestic capacities for exporting high value-added services). Some of these policy actions are already limited by WTO rules, while minimisation of policy spaces in relation to other areas has been unsuccessfully proposed by some developed country members of the WTO in the failed Singapore package of issues.³⁵

The ACP Group, as part of the G-90 Group of developing countries, successfully called for all the Singapore issues (with the exception of trade facilitation) to be excluded from the entire Doha Work Programme. Within the EPA negotiations, however, the EU has emphasised that the EPAs must address all the Singapore issues, arguing that they are essential tools for development.

Intellectual Property Rights (IPRs) and Services will also be negotiated between regions and the EU. For ACP countries, especially those in sub-Saharan Africa where HIV/AIDS has ravaged societies, access to medicines and the ability to pay for them will be prime concerns in IPRs negotiations.

Some regions are either conducting or have completed studies on investment (including West Africa and the Pacific) and competition policy and government procurement (ESA). Regarding trade facilitation, which is a priority for most regions, ACP countries expressed concern at the 27 October 2004 meeting that negotiations on this issue should not be prioritised at the expense of development issues.

Specific supply-side policy objectives regarding competitiveness and diversification in key sectors should be identified at the regional and country level, aimed at identifying “policy spaces” to be maintained if government procurements and investment rules are to be negotiated. These should be regarded as priority issues in relation to the Singapore issues.

2.4 Will Special and Differential Treatment emerge as an important negotiating issue in the future?

For the Pacific and Caribbean regions, S&DT mechanisms that take due account of the vulnerable states among them – such as small island developing states and LDCs – have been emphasised during the initial stages of the negotiations. In this regard, the Pacific has called for S&DT to go beyond longer transitional periods and technical assistance and

³⁵ Some examples of trade rules flexibilities in the “policy space dimension” are incentives (some of them technically subsidies) and incentive-based performance requirements (only a few of them prohibited by the TRIMs Agreement of WTO, the rest proposed for prohibition in the failed multilateral agreement on investment); the use of conditionalities in the Agreement on Services (GATS) for promoting domestic export capacities in service sectors; preferences in government procurement and flexibilities in relation to intellectual property rights commitments (TRIPs). See Corrales et al. (2003) “Spaces for Development Policy: Revisiting Special and Differential Treatment”, http://www.ictsd.org/dlogue/2003-05-06/ICTSD_SDT_draft_may03.pdf.

address critical constraints such as dispersed land masses and populations, isolation from major markets and sources of investment, among others.³⁶

However, for all ACP regions the systemic issue of asymmetric liberalisation with the EU, and the eventual losses of policy spaces as outlined above may become equally important. If the EU positions on these issues remain the same, then S&DT may become a major cross-cutting issue in the EPAs.

2.5 Basic divergence and opportunities not yet explored in relation to issues of Capacity Development support

ACP countries have pressed for detailed discussions on accompanying measures conceived to help their economies prepare for trade liberalisation and address supply-side constraints. The EU maintains, however, that the EPAs themselves will contribute to development by “enlarging the ACP markets and by establishing an open, transparent and reliable framework for trade, which will mobilise private initiatives and attract investment”.

EU negotiators have resisted the broad call to re-open discussion on EU development support, arguing that provisions and financial instruments to that effect were already contained in the Cotonou Agreement and provided through the European Development Fund (EDF).³⁷

While some accompanying measures could be envisaged, the EU has continuously stressed that the EPA negotiations should focus on trade and trade-related issues and not be an opportunity for renegotiating the financial resources available to ACP countries. Speaking in the Caribbean in April 2004, former EU Trade Commissioner Pascal Lamy stressed how the EU does not have a mandate to “negotiate development finance as part of EPAs”.

The divergent views on this matter have been partly carried over to the second phase of EPA negotiations, at the regional level. For instance, the adoption of road maps for the Central and Western African regions, to be jointly agreed with the EU, has been delayed in part due to the insistence by the two regions and the refusal by the EU to effectively integrate development concerns with commitments for additional support into the EPA negotiating agenda.

In their quest for additional support to accompany EPAs, the ACP negotiators should not lose sight of the current process of reviewing priorities and resource allocation of EU aid in the Mid-Term Reviews (MTRs). The RPTFs established in each EPA region constitute complementary fora to address these issues at both the political and technical levels.³⁸

³⁶ Jim Gosselin, "Pacific ACP States – EC Launch EPA Negotiations," TNI, Vol.3, No.6 available at <http://www.ictsd.org/tni/index.htm>

³⁷ The ACP Group has further sought to argue that funding for restructuring needs to be made available under procedures which allow rapid and effective deployment. The EU maintains that there is no need for additional resources, while such large amounts of European Development Fund (EDF) financing remain unspent. The ACP Group maintains additional funding is needed to address supply side constraints and support restructuring so as to avoid diverting already available funds from existing priorities (e.g. meeting the Millennium Development Goals), and the EU argues that supply-side constraints can best be addressed through “the identification and design of appropriate programmes and projects” under established aid programmes. Underpinning this discussion is the much broader issue of the efficiency of EDF aid deployment processes and the effectiveness of EU aid interventions in supporting economic restructuring.

³⁸ Jonas Frederiksen and San Bilal TNI July 2004.