

Implications of the Cotonou Agreement for Sustainable Development in the ACP Countries and Beyond



Konrad von Moltke
International Institute for Sustainable Development
November 2004

DEZA DIREKTION FÜR ENTWICKLUNG UND ZUSAMMENARBEIT
DDC DIRECTION DU DÉVELOPPEMENT ET DE LA COOPÉRATION
DSC DIREZIONE DELLO SVILUPPO E DELLA COOPERAZIONE
SDC SWISS AGENCY FOR DEVELOPMENT AND COOPERATION
COSUDE AGENCIA SUÍZA PARA EL DESARROLLO Y LA COOPERACIÓN



iisd

International
Institute for
Sustainable
Development

Institut
international du
développement
durable

Implications of the Cotonou Agreement for Sustainable Development in the ACP Countries and Beyond

Konrad von Moltke, International Institute for Sustainable Development
November 2004

iisd International Institute for Sustainable Development
Institut international du développement durable



Implications of the Cotonou Agreement for Sustainable Development in the ACP Countries and Beyond

© 2004 International Institute for Sustainable Development and the Swiss Agency for Development and Cooperation

Published by the International Institute for Sustainable Development

The International Institute for Sustainable Development contributes to sustainable development by advancing policy recommendations on international trade and investment, economic policy, climate change, measurement and assessment, and natural resources management. Through the Internet, we report on international negotiations and share knowledge gained through collaborative projects with global partners, resulting in more rigorous research, capacity building in developing countries and better dialogue between North and South.

IISD's vision is better living for all—sustainably; its mission is to champion innovation, enabling societies to live sustainably. IISD receives core operating support from the Government of Canada, provided through the Canadian International Development Agency (CIDA) and Environment Canada; and from the Province of Manitoba. The institute receives project funding from numerous governments inside and outside Canada, United Nations agencies, foundations and the private sector. IISD is registered as a charitable organization in Canada and has 501(c)(3) status in the United States.

Implications of the Cotonou Agreement for Sustainable Development in the ACP Countries and Beyond

Konrad von Moltke, Senior Fellow, International Institute for Sustainable Development

ISBN 1-895536-57-X

International Institute for Sustainable Development

161 Portage Avenue East, 6th Floor

Winnipeg, Manitoba

Canada R3B 0Y4

Tel: +1 (204) 958-7700

Fax: +1 (204) 958-7710

E-mail: info@iisd.ca

Web site: <http://www.iisd.org/>

This publication results from a Small Grant received from the Swiss Agency for Development and Cooperation (SDC), Global Issues and Development Division, as part of its program of support for IISD's work in Trade and Investment. The text is the responsibility of IISD alone, and does not necessarily represent Swiss government policy. The generous support of the Swiss government is, however, gratefully acknowledged.

This paper is one of four IISD/SDC papers published in November 2004. The other papers in the series are: *Bilateral Investment Treaties and Development Policy-Making*; *A Model International Investment Agreement for the Promotion of Sustainable Development*; and *A Capabilities Approach to Trade and Sustainable Development: Using Sen's Conception of Development to Re-examine the Debates*. All papers can be found on IISD's Web site at <http://www.iisd.org>

Contents

1. Introduction	1
2. The Cotonou Approach to Development	7
2.1 The political dimension	8
2.2 Participatory approaches	10
2.3 Poverty reduction	10
2.4 The framework for economic and trade cooperation	11
2.5 Reform of financial cooperation	12
3. Cotonou and the Trade Regime	15
3.1 Cotonou and the trade regime	15
3.2 Cotonou as an implied critique of the trade regime	16
4. Cotonou and Sustainable Development	19
4.1 Cotonou and bilateral development assistance	20
4.2 Cotonou and multilateral development assistance	21
4.3 Cotonou, development, trade and environment	22
4.4 The regional dimension	23
5. Conclusion: What are the Chances for Success?	25
5.1 Institutional inertia	25
5.2 Control of resources	25
5.3 Lack of focus	26

1. Introduction

For over 20 years, the European Union¹ had a relationship with a group of African, Caribbean and Pacific (ACP) countries that was governed by a series of treaties named after Lomé, the place where the first was signed in 1976, Lomé IV being the last of the series. The Lomé treaties included passages that dealt with trade and investment but at heart they were a reflection of the dominant development ideas of their day, providing public funds to invest in projects, thus contributing to the economic development of the recipient country.

As the end of Lomé IV came into sight, the European Commission produced a series of documents reviewing the results, which were modest.² These reports emphasized the need for a new agreement that would be more focussed on trade and more readily compatible with the requirements of the trade regime that had been revitalized in 1994 by conclusion of the Uruguay Round (UR) and the creation of the World Trade Organization (WTO). There had also

-
- 1 In keeping with common practice, this paper will refer throughout to the European Union, which was created by the 1992 Maastricht Treaty. Before that, it would be more appropriate to refer to the “European Community,” which was in turn preceded by the “European Communities.” To add to the potential for confusion, the “European Community” continues to exist as part of the current European Union. Indeed, the Commission, the most important executive body of the EU, is technically but the “Commission of the European Community.” In light of this confusion, it has become accepted practice to refer to the European Union without making any distinctions and to identify the Commission as the European Commission.
 - 2 European Commission, *Green Paper on Relations between the European Union and ACP Countries on the Eve of the 21st Century*. Luxembourg: Office for Official Publications of the European Communities, 1996. Also available at: http://europa.eu.int/comm/off/green/index_en.htm#1996. No longer available via the Internet: European Commission, *Guidelines for the Negotiation of new Co-operation Agreements with African, Caribbean and Pacific (ACP) Countries*. Luxembourg: Office for Official Publications of the European Communities, 1997. European Commission, *The Lomé Trade Regime*. Luxembourg: Office for Official Publications of the European Communities, 1997. European Commission, *The Stabex System and Export Resources in ACP Countries*. Luxembourg: Office for Official Publications of the European Communities, 1997. European Commission, *An Analysis of Trends in the Lomé IV Trade Regime and Consequences of Retaining It*. Luxembourg: Office for Official Publications of the European Communities, 1999.

been a dispute at the WTO concerning the EU banana regime that had resulted in a series of embarrassing critiques of the preferences for banana producers in countries favoured by the EU regime, for the most part ACP countries. While the banana regime had some unique characteristics, the implications of the banana dispute for the Lomé Agreement were still negative, since it also utilized preferences that were not well grounded in GATT/WTO law.

In taking the new approach, the EU continued the tradition of reflecting changing paradigms of development. In the post-UR era, development policies increasingly have taken into account the requirements of the trade regime and sought to capitalize on the benefits offered by increased trade.

In 2000, the Lomé treaties were replaced by a new agreement, called the Cotonou Partnership Agreement (CPA) after the place of its signing. The CPA enshrines a new vision of development, one based primarily on trade and private investment. It envisages a significantly changed basis for the EU-ACP relationship, drawing on the results of the Uruguay Round. Central to this new approach is the negotiation of Economic Partnership Agreements (EPAs) with regional groupings of ACP countries. The outlines of these EPAs are becoming steadily clearer as the active negotiation phase begins. In essence, they resemble EU bilateral trade agreements more closely than the traditional Lomé texts.

It is, nevertheless, unlikely that the relationship between the European Union and the ACP states will change quickly. The CPA does not abolish the funding mechanisms that characterized the Lomé Agreements. There is undoubtedly a good deal of institutional inertia attached to these funds, their use and disbursement. Yet the framework has changed, and further change appears inevitable.

Change is defined largely by the emphasis of the CPA on the liberalization of trade and investment and the creation of regional groups of ACP countries that will negotiate EPAs with the European Union and its Member states. The Cotonou Agreement is further characterized by its emphasis on good governance and sustainable development. The result is an exceptionally ambitious agenda that will prove hard to fulfil and is likely to require many years of negotiations. In light of the importance of the European Union and its Member states as a source of development assistance and because of the number and significance of the ACP countries, changes in their relationship are bound to have important impacts on other bilateral and multilateral institutions engaged in development assistance, as well as on international economic regimes.

The CPA represents an extraordinary bet on economic liberalization. For many years, the links between trade policy and development have been the

subject of debate—and the object of some skepticism. The problem is that “trade policy” by now encompasses much more than “trade.” Originally “trade” meant trade in goods. The original theory of comparative advantage assumed that most factors of production were not mobile, labour, capital and natural endowments in particular. It has evolved to take the increasing mobility of economic resources into account. By now, most factors of production have become mobile and “trade” also encompasses trade in factors such as services and capital movement. Economic theory continues to assume that the liberalization of such trade will engender efficiency gains and economic growth. The distribution of these gains—and consequently the development impacts—are, however, increasingly uncertain. The CPA includes many of these novel elements in the trade agenda, in particular investment, and will need to demonstrate that the results justify the effort.

There is ample evidence that liberalization of trade in goods generates economic growth, often in both exporting and importing countries. The evidence is less robust when it comes to trade in services: while comparative advantage presumably exists, the distribution of the benefits of liberalization of trade in services is much less certain. Every country can be assumed to enjoy comparative advantage in the production of some goods; indeed this is a matter of first principles of trade economics. The same is not true for trade in services, which requires the availability of trained, often highly specialized staff and where the creation and distribution of rents is directly affected by regulations that are needed to ensure the quality and consistency of many services. Consequently, the economic benefits from the liberalization of trade in services may, in practice, prove to be unevenly distributed. Countries with a supply of skilled employees, such as India, may benefit as will countries with established service sectors and consequently with market power and the ability to draw economic benefits from such skilled employees. Moreover, the expansion of non-tradable services, that is those that do not generate foreign currency, by means of foreign direct investment poses challenges to the balance of payments that have not been fully assessed. As profits accrue and are repatriated, they can represent a drain on scarce foreign currency resources without a balancing revenue stream, since the services are delivered and paid for domestically.

The benefits of liberalization become yet more difficult to anticipate when it comes to investment. Indeed, the issue with respect to investment is not liberalization at all—capital moves relatively freely between most countries and even countries with significant controls on capital flows are in practice often welcoming of investment. The issue is an effective balancing of investor rights and public goods as investments are made and subsequently over the entire life of such investments, often a period of decades, sometimes much longer. In practice, the contribution of foreign direct investment to the (sustainable) development objectives of a country will depend more on the specific charac-

teristics of that investment, the performance of investors as economic citizens, and the capabilities of host country governance than on the international rules governing it.

Finally, the “trade” agenda has come to include intellectual property rights, a legal structure that creates temporary monopolies, and hence potentially significant rents, for those who meet a highly stylized definition of “innovation,” which is beneficial for advanced economies. There can be hardly any pretense that IPR contribute to the development objectives of countries that are not significant producers of such innovations, except in the most oblique and delayed manner. While IPR are not part of the Cotonou agenda, as they are of the United States agenda for bilateral trade negotiations, they are very much part of the complex relations that may be expected to arise between the EU and the ACP countries through the CPA. The potential impact of these relationships was demonstrated at the Doha Ministerial conference of the WTO, where the priority issue for ACP countries was the granting of a WTO waiver for the CPA, to ensure that it would not be subject to challenge like the banana regime. This waiver was granted as one of the last acts of the Doha Ministerial Conference—after adoption of the Ministerial Declaration that served to launch the Doha Round of trade negotiations. Presumably the attitude of many ACP countries to the agenda set out in the Ministerial Declaration and shaped to a remarkable degree by the European Union, was heavily influenced by their desire to obtain the WTO waiver for the CPA. It can be argued that the focus on the WTO waiver will have led ACP countries to acquiesce in a negotiating agenda they may have viewed with more skepticism under other circumstances. Certainly there were signs of second thoughts among some ACP countries at the time of the following WTO Ministerial meeting in Cancun.

The Doha Round of trade negotiations has been called a “development round” or even the “Doha Development Agenda” (DDA), implying that development was the central concern of negotiators in Doha. In practice, it has proven difficult to give substance to this claim, which has all the appearances of a subsequent attempt to portray the compromises in Doha in a more favourable light. The relationship between trade and development—or more precisely between the specific provisions of trade agreements and development—remains one of the most complex and controversial issues. It is important to distinguish between economic theory—which frequently promises significant development advantages from trade negotiations—and the complex agreements that have been reached by the process of negotiation in the GATT/WTO. These negotiations represent an institutionalization of the principle of comparative advantage, which permits negotiators to assume that any agreement will always be better than no agreement. Yet many of the elements that make up “trade” negotiations at the beginning of the 21st century

have little to do with comparative advantage, so that trade agreements may be concluded that produce uneven benefits. This is true in particular of the Doha agenda, which sought to include new issues such as investment or competition whose impact on development depends almost entirely on the specific provisions that may be agreed in the negotiation process.

Under these circumstances, the CPA represents perhaps the most ambitious effort to validate the link between “trade” and development, in an environment where significant supplementary resources are available to effect desired changes in the economic relationships between the EU and the ACP countries. Yet the likelihood remains that the development benefits from the Cotonou Agreements will not flow more or less automatically but will depend to a large extent on the ability of EU and ACP negotiators to craft agreements that actually and demonstrably promote the development of ACP countries even while creating a more liberal trade environment between the partners. It remains to be seen whether the extensive institutional provisions, together with a broad political agenda and a new emphasis on participatory approaches, will suffice to provide the necessary framework for liberalization to succeed.

2. The Cotonou Approach to Development

“The central objective of ACP-EC cooperation is poverty reduction and ultimately its eradication; sustainable development; and progressive integration of the ACP countries into the world economy.”³ This ambitious objective is placed in the context of the relevant United Nations Conferences, which are not cited since the Agreement covers a 10-year period, but clearly include the Monterrey Conference on Financing for Development, the World Summit on Sustainable Development and the Millennium Development Goals. The institutional framework for the CPA is as ambitious as these goals imply.

The CPA is constructed from a series of layered declarations and legal provisions, beginning with “objectives,” moving on to “development strategies” and finally outlining an “approach to development.” These presumably represent elements of the drafting process and the need to accommodate sometimes significantly differing visions of the purpose of the Agreement.

“The objectives of ACP-EC development cooperation shall be pursued through integrated strategies that incorporate economic, social, cultural, environmental and institutional elements that must be locally owned.”⁴ To implement these objectives, the CPA envisages a partnership based on five interdependent pillars: a comprehensive political dimension; participatory approaches; a strengthened focus of poverty reduction; a new framework for economic and trade cooperation; and a reform of financial cooperation. Of these five pillars, the new framework for economic and trade cooperation represents the most significant departure from the previous Agreements between the EU and ACP countries.

Title I of the CPA sets out its “Development Strategies,” within which Article 20 CPA sets out “The Approach” to development: “The objectives of ACP-EC development cooperation shall be pursued through integrated strategies that incorporate social, cultural, environmental and institutional elements that must be locally owned. Cooperation shall thus provide a coherent enabling framework of support to the ACP’s own development strategies, ensuring

3 CPA Article 19.

4 CPA Article 20.

complementarity and interaction between the various elements. In this context and within the framework of development policies and reforms pursued by the ACP States, ACP-EC cooperation strategies shall aim at:

- (a) achieving rapid and sustained job-creating economic growth, developing the private sector, increasing employment, improving access to productive economic activities and resources, and fostering regional cooperation and integration;
- (b) promoting human and social development to ensure that the fruits of growth are widely and equitably shared and promoting gender equality;
- (c) promoting cultural values of communities and specific interactions with economic, political and social elements;
- (d) promoting institutional reforms and development, strengthening the institutions necessary for the consolidation of democracy, good governance and for efficient and competitive market economies; and building capacity for development and partnership; and
- (e) promoting environmental sustainability, regeneration and best practices, and the preservation of [the] natural resource base.”

The CPA utilizes a combination of instruments to pursue its development objectives: on the one hand the numerous and often highly detailed provisions of the Agreement itself; on the other hand the development of a “compendium” that provides operational guidelines in specific areas of cooperation. The texts of the compendium will be adopted by the EU subject to review by the ACP-EC Council of Ministers.⁵ The texts of this compendium can be viewed as a sort of secondary legislation or soft law adjunct to the CPA itself.

2.1 The political dimension

ACP countries have a long and complex history with certain EU Member states, including in most instances a colonial past. As a result there are both close ties and difficult relationships that must be taken into account. The CPA emphasizes political dialogue—primarily through the institutions of the CPA, which include a Council of Ministers, a Committee of Ambassadors and a Joint Parliamentary Assembly. The ACP states also maintain a Secretariat of

5 CPA Art. 20.3: “The detailed texts as regards development cooperation objectives and strategies, in particular sectoral policies and strategies shall be incorporated in a compendium providing operational guidelines in specific areas or sectors of cooperation. These texts may be revised, reviewed and/or amended by the Council of Ministers on the basis of a recommendation from the ACP-EC Development Finance Cooperation Committee.”

ACP States in Brussels, which is not, however, a creation of the ACP itself but rather an expression of the importance of the ACP-EU relationship from the perspective of the ACP countries.

Through these institutions, the CPA envisages an ambitious process of political consultation that is to cover issues ranging from development to security and from good governance to poverty alleviation. Significantly, the political dimension of the CPA is not subordinate to its development and trade provisions but rather the inverse is true: the Agreement's development strategy and its trade provisions are seen as tools for the attainment of its broader political goals.

The agenda of "good governance" forms part of the political dimension of the CPA. It addresses one of the most important issues that has emerged from the debate surrounding the less than satisfactory outcomes of traditional trade liberalization from the perspective of developing countries, namely: what are the institutional requirements to benefit from liberalized trade (and foreign direct investment)? The issue of good governance is addressed repeatedly by the CPA⁶ and defined in Article 9.3: "In the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law, good governance is the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development. It entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaborating and implementing measures aimed in particular at preventing and combating corruption."

Implementing the good governance agenda obviously represents a very large challenge, yet the EU has expressed the intent to link disbursement of aid funds to progress on the governance agenda—without, however, determining how the evaluations are to be carried out nor what form the subsequent linkages are liable to take. This is clearly an issue of potential conflict between the EU and certain ACP countries, yet it is of great significance in relation to the ability of the CPA to deliver on its more ambitious promises with regards to trade and investment: absent the essential elements of good governance it must remain doubtful whether economic liberalization will deliver growth, let alone poverty alleviation. In economic terms, lack of good governance creates numerous opportunities for the creation and misappropriation of rents, reducing economic benefits to the country concerned and leading as readily to impoverishment as to poverty reduction.

6 In the Preamble as well as Articles 8, 9 and 20.

2.2 Participatory approaches

The CPA contains new provisions that extend the potential for civil society involvement in the Partnership. These provisions reflect the growing consensus among development agencies concerning the role of non-state actors—defined by the CPA as “private sector; economic and social partners, including trade union organizations; civil society in all its forms according to national characteristics.” The provisions concerning participation and the role of civil society are to be found throughout the text.⁷

This emphasis on participation and the role of civil society reflects an assumption that significant elements of the development process envisaged by the CPA will be undertaken by non-state actors, as executing agents of projects, as participants in various forms of dialogue envisaged by the Agreement, or independently as economic actors responding to their own priorities but with some elements of support from the CPA.

This approach to development, increasingly pursued by other institutions as well, recognizes the importance of trade and investment in promoting economic growth and seeks to create an environment that is more conducive to these activities. In this manner, it is consistent with the increased emphasis on trade policies as an integral part of development strategies that characterizes the CPA.

2.3 Poverty reduction

The emphasis on poverty reduction has become a universal characteristic of development agreements and strategies. It reflects a sense of unease that after a period of unprecedented economic expansion poverty remains entrenched. While incomes have increased for many of the poor, disparities between rich and poor have increased even more. And it remains difficult to establish causality between economic policies and poverty reduction, except at the most general and theoretical level.

The CPA does not seek to chart new responses to the dilemmas of poverty reduction. It draws on the continuing international debate on issues of poverty. To the extent that poverty reduction involves issues of (re)distribution of economic resources it represents one of the most challenging of all political tasks. While economic growth presents policy-makers with the relatively pleasant prospect of making the benefits of this growth as widely available as possible, poverty reduction without economic growth entails the enactment of

7 Participation is referenced in Articles 2, 23, 25, 31, 50, 70 and 75. Civil society is mentioned in Articles 6, 7, 8, 9, 10, 11, 15, 17 and 19.

redistributive policies that are virtually impossible to adopt in either democratic or authoritarian forms of governance.

The emphasis on poverty reduction largely reflects the difficulties encountered in ensuring that benefits of economic growth are equitably distributed. While there is evidence that recent global economic growth has also benefited the poor, there is also evidence that inequality has increased. The distance between rich and poor has increased, in some countries dramatically so.

2.4 The framework for economic and trade cooperation

The provisions concerning economic and trade cooperation form the heart of the CPA, at least from the perspective of the European Union. They represent essentially an agreement within an agreement, involving a complex series of steps reaching quite far into the future.

The objectives of this economic and trade framework is to promote the smooth and gradual integration of ACP economies into the world economy; to enhance production, supply and trading capacities in the ACP countries; to create new trade dynamics and foster investment; and to ensure full conformity with WTO provisions.

The CPA provides for a “preparatory period” of eight years (2000–2008), during which the new trade and investment arrangements will be negotiated. During this period, almost all imports from all LDCs (whether ACP countries or not, and excluding ACP countries that are not LDCs according to the WTO definitions) will be permitted into the EU tariff-free (under the Everything But Arms initiative). Special arrangements will be maintained for certain sensitive commodities—beef, veal, sugar and possibly rice—but are subject to further review as the negotiation process goes forward.

The key to this entire structure will be “Economic Partnership Agreements (EPAs)” that are to be negotiated on a bilateral basis between the EU and regional groupings of ACP countries. These EPAs represent one of the most innovative features of the CPA, reflecting the EU’s own experience concerning the benefits of regional cooperation. These EPAs are to be negotiated over a period of years, beginning in 2002. The first formal negotiations were launched with Central Africa (CEMAC and Sao Tome & Principe) and Western Africa (ECOWAS and Mauritania). The outline of these negotiations has not yet been made public but they will certainly cover not just trade in goods but also critical issues such as investment.

While investment is to become an integral part of the EPA negotiations, the area of services is reserved for later consideration, based on the process within

the GATS. The CPA sets out some initial considerations for this process that are of particular interest to ACP countries.

In addition to setting the framework for the EPA negotiations, the CPA provides for cooperation between the partners in the WTO and in particular in “trade-related areas.” The WTO cooperation is couched in fairly general language but achieved a measure of success in the process leading up to the adoption of the Doha agenda. The list of “trade-related” areas includes services; competition policy; protection of intellectual property rights; standardization and certification; sanitary and phytosanitary measures; trade and environment; trade and labour standards; and consumer policy and protection of consumer health. Notably absent from this list is the topic of investment, which is considered an integral part of the agreed agenda for negotiation.

2.5 Reform of financial cooperation

From the perspective of the ACP countries the financial dimension forms the heart of the CPA. The EU provides significant levels of development funding through a panoply of Economic Development Fund instruments. The complexity is further increased by the relatively obscure relationship between EU funds and funds from EU Member states. The CPA is concluded jointly by the EU and its Member states. This reflects the complex distribution of competences within the EU and sets up a dynamic that occurs in other areas of EU relations with other countries: as internal competences shift, external competences are adjusted, leaving anybody not intimately involved with the EU process guessing as to where things stand at any given moment. The distribution of roles is exemplified by the funding arrangements, which involve funds from the EU budget as well as funds from Member states in accordance with a separate formal funding agreement.

One of the criticisms leading up to negotiation of the CPA was the excessive complexity of the funding instruments, drawing into question the coherence of EU assistance and fragmenting the political dialogue that was related to the disbursement of these funds. Under the new system, there will be only two instruments: one for providing grants and one for risk capital and loans to the private sector. Yet decision-making on the allocation remains complex and under the control of the EU and its Member states.

The grant envelope is established at 10 billion euros for the 9th EDF and 1.3 billion euros for regional programs. Within this framework, countries are to be allocated a fixed sum that can be reallocated from time to time in accordance with changing needs. The amount reserved for regional programs is clearly intended to reinforce the regional focus of the EPA process, even though support is not limited to the negotiating regions.

The Investment Facility is to replace the Lomé IV risk capital and interest-rate subsidy facilities. It is not an institution of the CPA but a committed program of the European Investment Bank, which will manage it. The Facility is funded at 2.2 billion euros carried over from Lomé Agreement funds and is intended to be a revolving fund with returns from operations in the form of interest, debt repayment and investment income. There is an assumption that no replenishment will be necessary but that assumes that the Facility will be sufficiently successful to maintain itself—and not so successful as to create demands that exceed available funds.

The objectives of the Facility will be to help develop businesses in ACP countries. The Facility will finance income earning, commercially viable private businesses and, if they meet these requirements, public enterprise. Businesses will have direct access to the Facility or indirect access, through intermediaries. It will participate in privatizations and aim to stimulate the investment of internal and external savings by helping to strengthen local financial institutions and capital markets and leverage foreign investment. The Facility will guarantee ACP countries a certain level of resources available for private sector development in the short, medium and long term. The Facility will focus basically on fields of intervention and operations that cannot be financed from private capital or by local financial institutions—in other words requests for medium and long-term finance, risk capital and flanking measures (guarantee funds, etc.).⁸ Interest rate subsidies will be permitted under certain circumstances.

Programming of CPA funds is to be made conditional on a number of performance indicators in addition to the more obvious needs criteria such as per capita income, Human Development Index status, level of indebtedness and export dependence. These indicators cover many of the areas of the CPA that concern good governance: progress with institutional reforms, transparency and accountability in the use of resources and quality of budget management, efficiency in the implementation of existing EU programs, progress with poverty alleviation, sustainable development measures and macroeconomic and sectoral policy performance. The impact such indicators will have on actual funding levels has not yet been established and is liable to be the subject of difficult negotiations.

Support from the EU to ACP countries has a long history. For many ACP countries this is the single most important source of grant funding, and many countries have been associated with the series of EC/EU programs stretching back to the earliest Yaoundé Agreement, which preceded the Lomé series of

8 DG Trade Web site.

Agreements, that is 30 years. The result is bound to be significant institutional inertia and resistance to change as well as a degree of dependence of certain sectors of society in the ACP countries on the flows from the EC/EU. Under these circumstances, it remains to be seen how far and how fast change in funding will extend.

3. Cotonou and the Trade Regime

The Cotonou Agreement holds the potential of bringing significant change to the practices of development assistance and trade negotiations. The underlying assumptions about development and the international economy differ markedly from those that characterize most existing multilateral development agencies. In particular, the Cotonou Agreement implies a much more important role for private investment in the development process. This can have consequences for bilateral assistance from EU Member states and from other like-minded countries.

3.1 Cotonou and the trade regime

A primary motivation in shifting from the Lomé regime to the Cotonou regime was a desire to be more readily consistent with WTO requirements. This touches on one of the more complex issues of the GATT/WTO system, namely its provisions for the formation of customs unions or free trade areas (GATT Article XXIV), together with its provisions for special and differential treatment for developing countries.

The framers of the GATT can hardly have anticipated the number and variety of trade agreements that have been concluded over the past 50 years. All such agreements must be notified to the GATT (and now the WTO), which can in principle undertake an assessment to determine whether they are in accordance with the quite specific provisions of Art. XXIV. In practice, neither the GATT nor the WTO are in a position to object to any agreement their Members may conclude: the rule of consensus implies that a move by one country to criticize an agreement concluded by other countries entails the direct risk of destroying the entire GATT edifice, since retaliation is simple by means of withholding consensus on matters of importance to those who are critical. Consequently, neither the Lomé Agreements nor the CPA were ever in much danger from the GATT/WTO, just as no other free trade agreement has ever been subjected to open criticism in the GATT. The major risks were associated with dispute settlement, which only comes to bear when a country believes that it has been deprived of certain specific privileges under the agreements by the interpretation or practices of another country.

Despite the relatively low risk of open conflict surrounding the Lomé Agreements there is little doubt that they sat uneasily within the GATT system, which envisaged classic customs unions and free trade areas rather than the mixture of development assistance and trade preferences that characterized Lomé. Moreover, the Generalized System of Preferences (GSP) that had been developed to accommodate some of the needs of the least developed countries do not apply to the ACP countries either, because some of the ACP countries do not meet the criteria for GSP and some countries that do meet these criteria are not among the ACP countries.

The Cotonou Agreement has already impacted on the trade regime in several ways. During the Doha Ministerial meeting, the need to obtain a waiver of GATT requirements was used to ensure that the ACP states remained within the consensus defined by the major participants.

Since then, the EU has submitted proposals for services negotiations that were highly controversial on account of their emphasis on private supply of many services that are often considered to be in the public domain. It was not widely recognized that these proposals were congruent with the assumptions of the Cotonou Agreement. In the WTO agriculture negotiations, the ACP states have tended to align with the EU.

3.2 Cotonou as an implied critique of the trade regime

Probably the last thing the negotiators of the CPA had in mind was to provide a critique of the trade regime. Yet by embedding the EU-ACP trade relationship in a substantial political, financial and institutional framework the CPA may lead to the conclusion that economic liberalization without such a framework stands little chance of promoting development, in particular in least developed countries. At the very least, it invites comparisons between the impacts of liberalization measures in the Cotonou environment and the impact of comparable measures in the sparse institutional environment of the WTO, and without supporting financial measures to improve the prospects for achieving the ultimate goals of sustainable development and poverty reduction.

There is some evidence to support both the EU approach to the ACP and the implicit critique that it represents of liberalization without accompanying political, financial and institutional measures. The Uruguay Round (UR) left some of the least developed countries worse off than before. The models that were used to predict massive economic gains from the UR already signalled that the poorest countries might be worse off. The reasons have to do with the lack of competitiveness of these countries. No model can predict what will

actually happen but these models did not include possible negative impacts from elements of the UR that are not susceptible to modeling, the TRIPS Agreement and the GATS in particular. As a result, more developing countries than anticipated may find themselves worse off.

The WTO response to this dilemma has been to develop the institution of “special and differential” treatment, essentially the granting of extended transition periods and sometimes even full exemptions from the requirements of certain agreements. Yet such measures are unlikely to be effective in reversing the disadvantages that have appeared, leading to the conclusion that measures of an entirely different character may be needed, measures such as those envisaged by the CPA. Within the Lomé framework, the impact of non-reciprocal trade preferences for developing countries has been disappointing. “Although they contributed to the commercial success of some countries, the global results have been mixed: ACP countries’ share of the EU market declined from 6.7 per cent in 1976 to three per cent in 1998, and still about 60 per cent of total exports are concentrated in only 10 products.”⁹

There is, however, no guarantee that the CPA will succeed where the Lomé Agreements largely failed. The implications of such a conclusion are even more disturbing, since they suggest that none of the panoply of measures envisaged by the CPA—political cooperation, institutional strengthening and financial support—suffice to deal with the problems of the least developed countries in a rapidly liberalizing world. For that reason what happens within the Cotonou framework has implications that are far reaching.

9 European Commission, “The new ACP-EC Agreement.”

4. Cotonou and Sustainable Development

The Cotonou Agreement endorses the concept of sustainable development and imposes it as a requirement on all participants. Those concerned with sustainable development will need to identify strategies to promote their goal within a framework that assumes significantly liberalized trade and investment between the EU and the ACP countries. The critical questions concerning sustainable development arise in relation to the EPA negotiations and the use of funds under the Agreement.

Sustainable development requires a fusion of environmental and development policies that is only possible in relation to specific environmental and social conditions. In other words, global agreements may contain important provisions concerning sustainable development but its practical implementation occurs at local, regional and national levels, precisely those covered by the specific provisions of EPAs.

No template for EPA negotiations has thus far been made publicly available. It is, therefore, not possible to assess the extent to which the starting position of the negotiating partners addresses the requirements of sustainable development. In many respects, these will take the form of specific institutional provisions, for environmental assessment, for monitoring of environmental conditions, for poverty alleviation measures, and for linking the two dimensions of sustainable development. These institutional requirements surpass the scope of traditional trade agreements, whether at the bilateral, regional or global level. In practice, the Cotonou process is seeking to promote the development of regional institutions even as it engages those regional institutions in a complex and demanding negotiation process.

The use of funds is similarly bound to specific activities and conditions close to the ground. It will of necessity promote—or defeat—sustainable development, depending on how funds are used. On the one hand, grant funds are important for institutional development and capacity building—and the CPA, as currently conceived, certainly creates extraordinary demands on institutional development in many of the ACP countries. On the other hand, the investment activities envisaged by the CPA—frequently involving a mix of public and private funds—will largely determine the future direction of some of the ACP countries' economies. Where these countries depend heavily on

the production of commodities, as most do, investment needs to ensure that the production and transport of such commodities occurs in an environmentally-acceptable manner, and that communities enjoy adequate prospects for the development of stable living conditions based on predictable employment conditions. In addition, investments promoted by the CPA can support the provision of adequate public services and decrease dependence on commodity production, but this is not an easy goal to achieve. It will require consistent and focused effort within a well-defined framework. The past record of funding under the Lomé Agreements has an undistinguished record from the perspective of sustainable development. It remains to be seen whether the Cotonou framework will create better conditions.

4.1 Cotonou and bilateral development assistance

The European Union's development assistance is a hybrid, neither a national program nor a multilateral agency. It has a political dimension that is represented by the Commission's Directorate General for External Assistance and a financial dimension that is embedded in the European Investment Bank, an agency that funds certain internal EU programs, some aspects of the EU enlargement process, and traditional development assistance projects. EPA negotiations are the responsibility of the Directorate General for Trade, where they do not appear to be a high priority.¹⁰ This hybrid character has made EU development assistance relatively difficult to track, in particular since it is oriented both towards EU programs and activities of Member states and in specific instances can use executing agencies from these Member states.

The CPA—like the Lomé Agreements—is a treaty between the ACP countries on the one hand and the European Union and its Member states (soon to be 25 in number) on the other. The latter conclude a treaty between themselves to ensure the distribution of funding, not all of which comes from the budget of the EU itself, and some of which is consequently subject to disbursement requirements of individual Member states. Through these complex linkages, the CPA interacts with bilateral activities of the EU Member states, whose collective development assistance budgets and activities represent a dominant proportion of total development assistance. The potential impact of changes in the ACP-EU relationship on the bilateral activities of EU Member states is significant. In particular, an EU effort to promote much closer integration of the Cotonou relationship with the requirements of trade regimes and to proceed to negotiation of EPAs is liable to have consequences for development assistance programs of Member states.

10 DG Trade, Work Program for 2004, where the CPA rates a single paragraph in 15 pages.

The importance of Cotonou is even greater when considered from the perspective of the ACP countries. Most of these countries' historical ties to certain EU Member states are rooted in a colonial past, ties that are frequently still reflected in language, transport infrastructure, institutions of governance and security arrangements. The combined resources of Cotonou assistance and bilateral support from EU Member states represents almost the entire available envelope of development assistance for these countries. They have little choice but to accede to strongly held views of the EU and its Member states when it comes to the design and execution of development assistance.

4.2 Cotonou and multilateral development assistance

With its strong emphasis on trade and investment and on WTO-conformity, the Cotonou Agreement implies a model of development that is significantly different from that incorporated into much multilateral development assistance. This raises two important issues: the need to adjust multilateral development assistance to conform more closely to the assumptions underlying trade agreements, and the fundamental question whether the WTO approach to development represents an appropriate strategy. At the very least, the Cotonou Agreement implies development assistance that is more sharply directed towards supporting the development of strong markets and the capacity building efforts that need to accompany this process. It also assumes that the optimum development strategy for the ACP countries is to vigorously pursue their integration into the global economy.

There are two distinct aspects to the relationship between Cotonou and multilateral development assistance—on the one hand the relationship to the Bretton Woods institutions; on the other hand the relationship to all other forms of multilateral assistance including, in particular, funds available to implement multilateral environmental agreements, whether administered by the World Bank or not.

The relationship between the WTO and the Bretton Woods institutions is complex. The WTO is a negotiating forum that operates largely along the lines of the UN system, albeit without belonging to that system: decisions are taken by consensus and the typical WTO organ is a committee of the whole, that is an institution whose membership is identical to that of the organization itself. The WTO maintains no presence in any of its Member states; it does not have offices or representatives outside Geneva. It embodies a set of principles but does not itself constitute the primary implementing agency for these principles—that is a privilege reserved to the individual Member states. The WTO system of implementation is “multi-unilateral” in the sense that each country interprets the WTO Agreements as it considers appropriate. There are certain information obligations when it comes to these interpreta-

tions—and to actions that relate to the WTO Agreements—and the WTO has a remarkable dispute settlement system. Yet even the dispute settlement system is triggered by the complaint of one Member against another: the Secretariat has no authority to initiate any enforcement or other kind of implementation action. With the creation of the permanent Appellate Body, the role of the secretariat in dispute settlement has been markedly reduced. Traditionally, the Geneva staff provides the secretary of dispute panels, and this was one route by which interpretative change of the relevant agreements could be influenced. Since the end of the Uruguay Round, authoritative interpretation (to the extent that it exists at all) resides in the AB, which has not hesitated to contradict positions espoused by panels, presumably on the advice—or at least not against the advice—of the secretariat. In other words, the WTO is an extraordinarily passive regime. Not so the Bretton Woods institutions, which rarely hesitate to provide normative advice to countries based on their particular mandates but which have extremely limited capability to make new rules. Indeed, the tasks of the International Monetary Fund are defined in an almost limitative manner by its charter. The World Bank has sharply limited credibility as a forum for negotiation on account of its governance structure, which is skewed in favour of developed countries against the recipients of its loans. While the WTO and the Bretton Woods institutions have a strong theoretical link—underlined by explicit recognition in the WTO Agreement—in practice there is only limited overlap, much less than between the WTO and multilateral environmental agreements, the World Intellectual Property Rights Organization (WIPO) or international standardization bodies such as the International Organization for Standardization (ISO).

The major area of joint concern between the WTO and the World Bank involves the promotion of conditions conducive to effective participation in the international trading system: the construction of infrastructure, the development of good governance, and capacity building. These are activities that may benefit from World Bank financing, and without which the multilateral trading system entails the risk of continued disadvantage for developing countries. This is also precisely the area to be addressed by funding through the CPA.

Since the burden of interpreting and implementing the WTO Agreements lies with its Members, the emphasis of the CPA on WTO-conformity is highly significant. It suggests a shift in funding priorities for multilateral development assistance towards activities that specifically promote effective participation of developing countries in the multilateral trading system.

4.3 Cotonou, development, trade and environment

The Cotonou Agreement enters a difficult arena where development, trade and environment intersect. While there has been near universal recognition of

the significance of this intersection—identified as “sustainable development”—turning this recognition into practical policy prescriptions remains elusive.

The CPA is in the process of incorporating the rules of the trade regime into a major development agreement. It does not stop there: it articulates the legitimacy of the environmental agenda, it provides a funding mechanism, and it includes significant institutional resources to review and assess results. By and large, these are the very steps that many suggest will help to overcome the difficulties encountered in linking trade to development, or trade to poverty reduction in particular. Without careful attention to the environmental dimension, without targeted resources to promote good governance, institutional development and the strengthening of infrastructure, without a robust institutional environment to continuously test and evaluate progress made towards goals that have been set, it is unlikely that economic liberalization alone will generate the benefits that are essential from the perspective of sustainable development.

It may seem that the CPA represents the best current prospect of moving forward on the agenda of trade and sustainable development. Yet many questions remain. Is the commitment of all partners to the CPA to sustainable development equally strong? This question applies to the ACP countries, which did not have much choice but to go along with the new approach advocated by the European Union if they wanted to retain the funding they had grown accustomed to. It also applies to the EU Member states, who are parties to the CPA but who do not manifest themselves individually in a discernible manner, except as members of the Committee of Ambassadors and of the CPA Council of Ministers.

4.4 The regional dimension

One of the most dramatic innovations of the CPA is its emphasis on regional integration of the ACP countries. To some extent this reflects an emergent reality. ACP countries in the Caribbean and Pacific regions have developed notable institutions of cooperation, even when these have co-existed with other regional institutions that included non-ACP countries. This development reflects the importance of the development assistance available from the EU for the countries concerned. Consequently, the negotiation of EPAs will tend to reinforce an existing dynamic. The degree of integration of institutions is different in the Caribbean, which has a joint negotiating mechanism in place, and the Pacific where geography renders the practicalities of cooperation much more onerous.

In Africa, the CPA emphasis on regional association is liable to trigger quite significant changes. In Western Africa, ECOWAS represents an established

framework with some experience of balancing the interests of the countries that are part of the (francophone) CFA zone and have an incipient customs union, against those of the other (anglophone) countries of the region, two of which (Nigeria and Ghana) are significantly larger than any of the others. In Central Eastern and Southern Africa there continues to be some uncertainty as to how the boundaries around negotiating regions will ultimately be drawn. The Central African region has now established itself as a negotiating partner, leaving major decisions still to be taken in Eastern and Southern Africa.

The position of South Africa within the Cotonou system poses some special issues. South Africa is by far the most important of the countries in its region. It has negotiated a bilateral trade agreement with the European Union, which recognizes the economic importance of South Africa in part by including a number of onerous or limiting provisions. An Annex to the CPA addresses the status of South Africa. It specifies that the bilateral agreement with the EU will take precedence but that South Africa can participate in many of the institutional processes of the CPA and is eligible for some of the funding. Since the bilateral trade agreement takes precedence, however, South Africa will not participate in the EPA negotiations, which will cover much of the same ground. Yet South Africa is closely integrated with its immediate neighbours through the Southern African Customs Union (SACU) and with its more distant neighbours through the SDAC mechanisms and has a vital interest in ensuring that the provisions of the EPA that apply to these neighbours does not undermine the preponderant role in that mechanism, always assuming that the problem of Zimbabwe can be resolved.

In general, the CPA emphasis on regional cooperation is to be welcomed. Few of the ACP countries are in a position to negotiate effectively with the European Union on a bilateral basis, as South Africa has done. Many do not have the resources by themselves to respond to the good governance agenda of the CPA or to create the necessary institutional infrastructure implied by the EPAs. By pooling some of these resources there is a much better prospect that the overall outcome will be satisfactory.

Finally, the regional emphasis reflects the experience of the European Union itself. The process of European integration is one of the signal achievements of the second half of the twentieth century and it certainly suggests that developing countries could benefit from pursuing similar strategies. While it remains to be seen whether the potential gains from regional association can be realized under the specific conditions of the ACP countries, the creation of strong incentives to at least explore their potential is a positive development.

5. Conclusion: What are the Chances for Success?

The CPA sets out an ambitious agenda. It faces several major hurdles:

5.1 Institutional inertia

The transition from Lomé IV to the CPA was virtually seamless. The individuals and the institutions that had evolved around the Lomé Agreements continued to function, now within the new framework of the CPA. The risks of institutional inertia, that is of a continuation of previous practices in a new framework is consequently a real problem, in particular in light of the other two issues, the control of resources and the lack of focus.

5.2 Control of resources

The CPA is supported by significant financial resources, and for many of the ACP countries it is presumably the availability of these resources that is the principal motivating factor. Indeed, a portion of the CPA funding is made up of undisbursed funds carried over from Lomé IV. In any regime, the control of funding is critical, and there has been no change in the institutions of control from Lomé IV to the CPA. The European donors have the final say on what gets funded.

It is hard to argue with this situation: the funds are after all European taxpayers' funds, and the European institutions, both national and EU, are ultimately responsible to European taxpayers for the use that is made of these funds. Moreover, the representatives of ACP countries are hardly disinterested, or at the very least they are representatives of decision-makers in their countries for whom the disbursement of these funds is a matter of vital concern. One of the key elements in the former EU banana regime was the community of interest between EU importers and those who organized the export in the producing countries. The very large rents associated with the banana regime were largely controlled by these two groups.

Despite these factors, it appears desirable to develop institutions of joint control over funds that are allocated for specific purposes. The prospects of pro-

moting good governance seem slim if it is not possible to develop such institutions of joint control.

5.3 Lack of focus

The governments of ACP countries are sharply focused on the funds associated with the CPA; while the EU is characterized by a dispersal of functions. Ultimate control of the regime resides in the Council of Ministers and the Committee of Ambassadors, but day-to-day management is distributed between several EU and national institutions. The EPA negotiations in particular are to be conducted by DG Trade while the management of the resulting regime will be the responsibility of DG External Assistance and the European Investment Bank. The resulting distribution of functions is not likely to be conducive to a sharp focus on the outcomes of the regime, the sustainable development outcomes in particular.



Implications of the Cotonou Agreement for Sustainable Development in the ACP Countries and Beyond

This paper assesses the Cotonou Partnership Agreement (CPA)—an agreement between the EU and a group of African, Caribbean and Pacific (ACP) countries, most of them former colonies. The CPA relies heavily on the benefits of trade liberalization, complemented by EU aid in various forms. How likely is it that this grand experiment will promote sustainable development, and what else needs to be done to ensure that it does?