ACP-EC NEGOTIATIONS ON THE ECONOMIC PARTNERSHIP AGREEMENTS (EPAs)

PHASE I OF EPA NEGOTIATIONS:
BACKGROUND, MANDATES, NEGOTIATING PROCESS

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A. BACKGROUND

1. The ACP-EU Partnership Agreement, which was signed in Cotonou in June 2000 (Cotonou Agreement), provides for the conclusion between the ACP and the EU of “new World Trade Organisation (WTO) compatible trading arrangements, removing progressively barriers to trade between them and enhancing cooperation in all areas relevant to trade” (Article 36(1)). In this regard, economic partnership agreements (EPAs) will be negotiated during the period starting from September 2002 until 31 December 2007. Pursuant to Article 37(5) of the Cotonou Agreement, negotiations of EPAs will be undertaken with ACP countries which consider themselves in a position to do so, at the level they consider appropriate and in accordance with the procedures agreed by the ACP Group, taking into account regional integration process within the ACP.

2. The Cotonou Agreement establishes a comprehensive framework for ACP-EU relations. At the centre of the partnership are economic development, the reduction and eventual eradication of poverty, and the smooth and gradual integration of ACP States into the world economy. The negotiations of EPAs shall take account of and be coherent with the objectives and principles of the Cotonou Agreement because all the different pillars of the Cotonou Agreement should be mutually reinforcing and supportive.

3. Moreover, EPAs will be negotiated at a time when many ACP States will also be involved in other negotiations, whether at the bilateral, regional/sub-regional or multilateral level. As a result of the WTO Doha Ministerial Conference, negotiations are currently taking place in the WTO in a number of areas and are expected to be concluded by 1 January 2005. Some ACP States are also participating in negotiations at the regional level, such as the negotiations of the Free Trade Area of the Americas (FTAA). At the same time, many ACP States are involved in regional integration processes which, in some cases, are expected to lead to the establishment of a customs union or a deeper form of regional integration. Further, the New Partnership for Africa’s Development (NEPAD) has been launched at the level of the African continent.

4. Despite their diversity, ACP States share a number of common interests in the economic, social, political and cultural fields and have been united as a group since the first Lomé Convention was signed in 1975. They have negotiated the successive Lomé Conventions and the Cotonou Agreement together. In view of the complexity and demanding nature of the forthcoming negotiations with the EU, ACP unity and solidarity, which have been reaffirmed at the highest political level during the First and Second Summits of ACP Heads of State and Government, will be most critical.

5. In its guidelines for the negotiation of EPAs (Negotiating Guidelines – document ACP/61/056/02 final), the ACP Group decided that the negotiation of EPAs with the EU should be conducted in two phases. Following the acceptance by the EU of the ACP position, the first phase of EPA negotiations started in September 2002.
B. MANDATES

6. The ACP Guidelines for the Negotiation of EPAs (doc. ACP/61/056/02 final) as adopted by the ACP Group, contains the main approach to the EPA negotiations. Paragraph 12 of the Guidelines that negotiations stipulates the two-phase approach and the time-line for the two phases. This time line was intended to allow ACP States to complete or make sufficient progress in the negotiations under Phase I. This was also to be paralleled by actions at national and regional levels targeted at carrying out in-depth studies, relevant capacity building actions and other technical preparations in anticipation of the substantive EPA negotiations under Phase 2. The Guidelines contain detailed delineation of the ACP approach for the first phase of the EPA negotiations.

7. Paragraphs 13 to 33 of the ACP Negotiating Guidelines specifies the principles that should inform the EPA negotiations. These include:
   - Sustainable development-oriented EPAs
   - ACP unity and solidarity
   - Preservation and improvement of the Lomé acquis
   - WTO-compatibility
   - Special and differential treatment
   - Flexibility
   - Sustainability
   - Coherence and consistency
   - Regional integration priorities
   - Legitimacy of EPAs
   - Additionality of resources and support for adjustment

8. Paragraphs 34 and 35 delineates both the strategic and specific objectives. Built on the guidance provided by the Cotonou Agreement, the latter includes objectives of the ACP Group in the EPA negotiations with respect to the following subjects:
   - **Trade issues**
     - Market access – including Agriculture and Trade in Services
     - Rules of origin
     - Customs procedures/trade facilitation
     - Safeguards
   - **Trade-related issues**
     - Competition policy
     - Intellectual property rights
     - Standardisation and certification
     - Sanitary and phytosanitary measures
     - Trade and environment
     - Trade and labour standards
   - **Development cooperation issues**
     - Supply-side constraints
     - Transport
Energy
- Technologies, including information and communication technologies
- Commodities
- Fisheries Agreements
- Measures to address adjustment costs

Legal Issues
- Dispute Settlement
- Other legal issues

9. Paragraph 12 of the ACP Negotiating Guidelines clearly stipulates the scope and focus of the EPA negotiations in the two phases. It delineates the subjects that were intended for phase one negotiations including principles, objectives and scope and content of EPAs, and a whole range of issues of common interest to the ACP Group. It also stipulates that phase 2 issues will cover, inter alia, tariff negotiations and any other specific sectoral commitments at national or regional level as the case may be and issues of specific interest to ACP countries or regions.

10. The EC Directives for the negotiations of EPAs contains the EC’s approach to the entire EPA negotiations. The main issues include:

a. Trade in goods including:
   - Import duties for imports into the Community and ACP countries;
   - General provisions
   - Rules of origin
   - Trade facilitation
b. Trade in services
c. Current payments and capital movements
d. Trade related areas
e. Complementarity
f. Institutional framework
g. Final provisions, and
h. Structure and organisation of the negotiations.

C. NEGOTIATING PROCESS

i. Subjects

11. The ACP Group further agreed on a six-cluster set of subjects based on the four that are delineated in section B above. The six clusters of subjects are as follows:

1. Market access – including rules of origin, customs procedures, trade facilitation, safeguards, WTO compatibility, product coverage and transitional periods;
2. **Agriculture** – including fisheries agreements; commodities;

3. **Trade in services**;

4. **Trade-related issues** including competition policy, intellectual property rights, standardization and certification, sanitary and phytosanitary measures, trade and the environment, trade and labour standards;

5. **Development cooperation issues** including supply-side constraints, transport, energy, technologies, investment promotion and protection schemes, and measures to address adjustment costs;

6. **Legal issues** including dispute settlement, legal status of the Agreement(s), institutional matters, etc

### ii. Negotiating Groups

12. In line with the agreed process for the negotiations during the first phase that negotiations would be undertaken at both Ambassadorial and Ministerial levels, the ACP Group constituted the six negotiating groups at these two levels as follows:

### AMBASSADORIAL TROIKAS FOR THE EPA NEGOTIATIONS

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iii. The process

13. The negotiations were launched on 27 September 2002 at the first joint ACP-EC Ministerial meeting. Subsequent to the launch a total of eight negotiating sessions at Ambassadorial level took place before the second joint Ministerial meeting on 2 October 2003 (also in Brussels). The negotiations at the Ambassadorial level were supported by a series of dedicated sessions to address specific issues that required detailed discussions. A total of twelve such sessions were held along the main clusters of the negotiating subjects. These were also at the Ambassadorial level.

D. CURRENT OUTCOME

14. The outcome of the negotiations under the all-ACP-EC phase is captured in joint report, document ACP/00/118/03 Rev.1 – ACP-EC.NG/NP/43 dated 2 October 2003, and the accompanying sets of annexes. A joint declaration was agreed upon by both sides which reaffirms that:

- the results of the first phase of the EPA negotiations have been satisfactory with regard to the high degree of convergence reached;
- the joint report on the all-ACP-EC phase of EPA negotiations, which the Ministers adopted, shall serve as a point of reference, and provide guidance, for the negotiations to be conducted at regional level; and
• the second phase of EPA negotiations were to be launched in October 2003, with regional negotiations in Central Africa (4 October) and West Africa (6 October).

15. It is essential to note that this is not the conclusion of the first phase. The significant element of this joint declaration is the attachment of all joint reports from the Ambassadorial and dedicated sessions, and the commitment that these reports provide guidance for the negotiations to be conducted at regional level.

16. To the ACP Group, the joint declaration is a commitment of both sides on the areas of convergence. As the regional negotiations gets underway, it is a challenge on both sides to live up to the agreements reached so far on all cross-cutting issues and not to reopen discussions on these issues if such reopening means backtracking from the current commitments.

17. The implication of this is that regions will have to, in the short- to medium- term, intensify their internal negotiations to determine the process for greater trade and economic integration. On the basis of the results of these internal negotiations, regions will be able to open meaningful negotiations with the EC.

18. The second Joint Ministerial meeting agreed that the outstanding issues will be addressed at the all-ACP-EC level, and further agreed on a new joint mechanism for addressing these issues at the joint level. The agreed joint mechanism includes regional representation. This is where we, the ACP Group, will have to use our own ingenuity to overcome the difficulties of addressing the outstanding issues.

19. On the ACP side we still maintain the structures we established at the start of the negotiations. This will be very helpful in terms of continuity and transparency at our level for the issues still to be covered at the all-ACP-EC level. The challenges, however, is how soon we can start addressing these issues in the light of the on-going discussions on the post-Cancun outlook.

E. CONCLUSION

20. Though the joint declaration mentions a high degree of convergence, there are still a number of areas where divergence of views persists and other areas where discussions are yet to take place. The ACP Group identified and agreed upon seventeen such areas. The Group further proposed that negotiations at the All-ACP level will be conducted on these issues. We look forward to considering the following issues in the forthcoming months at the all-ACP-EC level.

• Compatibility with the WTO
• Dispute settlement
• Non-execution clause
• Definition of the parties to the EPA
• Procedures for the entry into force of the EPAs
• Trade-related areas
• Rules of origin
• Safeguard measures
• Commodity protocols
• All-ACP/EU framework agreement on fishing
• Implications of the EPAs on budgetary, economic and social planning and balance of payments
• Additional resources
• Treatment for non-LDCs not in a position to conclude EPAs
• Treatment for LDCs not in a position to conclude EPAs
• SPS issues
• Regular, formal and comprehensive reviews of EPA preparations and negotiations, and
• Mechanism for the implementation of the EPAs.

21. The ACP Group is agreeable on the above list, and agreed that negotiations on these issues of common interest at the All-ACP level will be conducted by the ACP negotiating structures as specified in Decision No.1/02 of 26 September 2002 adopted by the Special session of the ACP Council of Ministers on the structure of the EPA negotiations.