

ACP-EU COTONOU AGREEMENT

**AFRICAN, CARIBBEAN AND
PACIFIC GROUP OF STATES**

**COUNCIL OF
THE EUROPEAN UNION**

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SUMMARY RECORD

of: 69th meeting of the ACP-EU Subcommittee on Trade Cooperation
on: 13 April 2012
at: ACP House, 451 Avenue Georges Henri, 1200 Brussels
Subject: Summary record of the 69th meeting of the ACP-EU Subcommittee on Trade
Cooperation

The ACP-EU Subcommittee on Trade Cooperation held its 69th meeting at ACP House on 13 April 2012.

The meeting was co-chaired by H.E. Mr Peceli VOCEA, Ambassador of Fiji, for the ACP side and Mr Peter THOMPSON, Director at the European Commission Directorate-General for Trade, for the EU side.

1. Adoption of the agenda

The agenda as set out in [ACP/61/008/12 - ACP-EU 2103/12] was adopted.

2. Approval of the summary record of the previous meeting

The summary record of the previous meeting [ACP/61/062/11 - ACP-EU 2109/11] was approved.

3. ACP-EU Economic Partnership Agreements

a. State of play of the on-going negotiations

b. Implementation

c. EC proposal for amendment to Market Access Regulation 1528/07

The EU Co-chair described recent developments with regard to the implementation of the existing EPAs. He recalled that on 13 March 2012 Zimbabwe had completed its ratification procedure, which would allow provisional application of the ESA interim EPA between the EU and Eastern and Southern Africa signatory countries, upon notification of both parties. He informed the Subcommittee of the second meeting of the Trade Committee under the Pacific interim EPA which took place in February 2012 in Papua New Guinea and announced that the second meeting of the CARIFORUM EPA Council would take place by the end of 2012.

Moving to the process of EPA negotiations, the Commission representative recalled the ongoing internal EU deliberations on the amendment to Regulation 1528/07 (hereinafter: Market Access Regulation) and on the new Generalised System of Preferences. He argued that the Market Access Regulation was a temporary arrangement and it needed to be updated in order to improve the legal certainty and fairness of the EU-ACP trade arrangements. He thought that 2012 would be an important year in the EPA negotiations, which had advanced considerably in the past months. He outlined the progress made in EPA negotiations with the Pacific, Central Africa, ESA, East-African Community, West Africa and the SADC. Although negotiations in these regions are at varying stages, in all regions some technical work still remains to be done.

He declared that in all negotiations the Commission is seeking to strike a fine balance between developmental needs of ACP countries and regions and the principles and rules of the WTO. He underlined that, given the upcoming amendment to the Market Access Regulation, the negotiations should gain momentum in order to allow the countries concerned to conclude negotiations and continue benefiting from duty-free quota-free access to European markets. This would require a political commitment and the development of a realistic understanding of EU and ACP interests.

The ACP Co-chair took note of the developments which had taken place in the EPA negotiations and implementation. He recalled the ACP position on the EPA process which was articulated at the meeting of the Joint Ministerial Trade Committee in December 2011. He voiced concern over the EU's intention to amend the Market Access Regulation and outlined the process which had led to the conclusion of the interim EPAs at the end of 2007 and the establishment of the Market Access Regulation.

He recalled certain global and regional developments which had influenced the EPA negotiations: a general lack of public support for EPAs in the ACP regions; a stalemate in the Doha Round which the ACP had hoped would modify the provisions of the regional trade agreements and inject flexibility to enable LDCs to conclude free trade agreements (FTAs) with developed countries and ACP regions; and the process of building FTAs and Customs Unions in Africa, which are necessary before concluding the same with third parties.

On the proposed amendment to the Market Access Regulation, the ACP side stated that there was no justification to set up a unilateral deadline, and noted that most ACP States were still negotiating with a view to concluding comprehensive mutually beneficial EPAs encompassing all members of the negotiating configurations. The ACP Group therefore held the view that the proposed amendment should be withdrawn.

Addressing the remarks made by the ACP side, the EU Co-chair underlined that political commitment was key in order to build public support for EPAs. With regard to the Market Access Regulation, he clarified that the Regulation should be amended rapidly, as delays call into question the efforts made by ACP states which have signed and ratified their respective interim Agreements, and undermine the credibility of the EPA process.

The representative of Guyana clarified that his government, representing a country that had signed an EPA, did not consider itself to be treated unfairly if certain countries which had failed to sign their agreements continued to benefit from the duty-free quota-free access to the European market on the basis of the Market Access Regulation. He emphasised that flexibility is required in order to reach the development objective of the EPAs.

4. ACP-EU trade regime issues

a. EC Communication on Trade, Growth and Development

The EU Co-chair explained that the aim of the Communication was to adapt the EU's trade and development policy to changes in the global economy since 2002. The Communication confirmed and complemented the EU's key principles of trade and development in the following respects:

- 1) Openness to trade is a prerequisite for successful development. The EU's goal is to help developing countries integrate into the multilateral trading system and to enable trade to contribute towards poverty reduction.

- 2) While trade is an important element of the development equation, a number of other elements come into play: nationally-owned domestic policies and good governance are therefore necessary to maximise the benefits of trade and make it work for the poor.

- 3) Historically low tariffs and the need for developing countries to access cheaper imports, know-how and foreign direct investment point to the growing importance of behind-the-border issues such as trade facilitation; technical, social and environmental rules; investment; services; intellectual property rights; public procurement; etc.

- 4) The EU must take into account the growing disparities amongst developing countries to focus efforts on those lagging most behind, while graduating countries would be offered a more mature partnership, which includes regulatory cooperation and engagement on key global issues.

The EU Co-chair informed the Subcommittee that on 16 March 2012 the EU Council of Ministers adopted Conclusions on Trade, Growth and Development, which embrace the principles and core elements of the Communication.

The ACP Co-chair was of the opinion that the Communication placed the focus on trade and investment-led growth and the protection of intellectual property rights and foreign direct investments as key contributors to growth. ACP countries believe however that the growth agenda should take account of the social and environmental externalities of the developing countries. He rejected the notion of differentiation among members of the ACP Group, except where this had been discussed and agreed upon in the context of the Cotonou Agreement or adopted in the past, e.g. as regards the EBA Facility.

The ACP Co-chair regretted that the Communication did not address the unique situation of small island developing states (SIDS), which are dependent on a few commodities for their export earnings and vulnerable to climate change, and suggested that special provisions should be established to accommodate their situation.

The ACP Co-chair also raised concerns over the fact that the EU had embarked on numerous different trade regimes with developing countries, which could erode the benefits that would have accrued to the ACP States under the EPAs. The ACP Co-chair reverted to the issue of the Commission proposal to amend the Market Access Regulation which, if approved, could further undermine ACP regional integration efforts.

The ACP Co-chair declared that on aid for trade there should be a move beyond simple capacity building and technical assistance to additional support that would help to consolidate production and lower production costs within regions as well as promote regional trade in general.

He noted that the Communication called for more commitment to refrain both from protectionism and from the use of export taxes and export restrictions on food, raw materials and natural resources. Nevertheless, ACP countries intend to take all necessary measures to benefit from their raw materials with a view to diversifying their economies and moving up the value chain.

The ACP Co-chair called on the EU to reduce the use of the broad range of policy tools and flexibilities at its disposal in its trade import regime to protect its own market.

The representatives of Mauritius and Jamaica, while welcoming the Communication, criticised the proposed differentiation and called for special treatment for the SIDS.

The EU Co-chair, addressing the concerns expressed by ACP representatives, clarified that differentiation was about affording a differentiated treatment to different needs. He recalled that even in the SIDS context there were major differences between countries. Other SIDS-specific problems needed to be addressed, but tools other than trade tools may be more suitable for doing so. He acknowledged that preference erosion was an ongoing process and that it was likely to continue in the future. This evolution would result in tariffs losing their importance as barriers to trade.

b. EU preferential market access offer to third countries - Pakistan and Western Balkans

The EU Co-chair described the proposed waiver for Pakistan, which would allow the EU to grant additional autonomous trade preferences to Pakistan. These trade preferences were a part of an EU package of measures to help Pakistan's economy recover from devastating floods. The EU Co-chair stressed that this was an exceptional measure which responds to an exceptional situation and was thus not meant to set a precedent. The duration of the waiver was from 1 January 2012 until 31 December 2013. Following WTO's agreement to the waiver the EU was completing its internal procedures necessary for adopting and allowing the entry into force of a corresponding legal instrument.

Addressing the issue of the Western Balkans, the EU Co-chair clarified that since 2000 the EU had granted the countries in the region certain exceptional trade preferences, suspending tariffs on virtually all imports originating in the region. The preferential scheme was the subject of a WTO waiver originally granted in 2000. It had been extended twice, first in 2006 and for the second time in November 2011 until 31 December 2015. Over the years, the Western Balkans had made significant progress towards economic development; however, the region still needed EU support in order to ensure that its socio-economic development would be sustainable; the termination of the trade preferences would have very negative consequences on the overall economic performances of the Western Balkans.

The ACP Co-chair welcomed the assistance provided by the EU to Pakistan. He proposed that, in addition to the humanitarian assistance which the EU offers to ACP States in cases of natural disaster, consideration should also be given to trade measures, as was the case for Pakistan. Specific reference was made with respect to Haiti which had undergone a similar tragedy and which would be adversely affected by the proposal to revise the Market Access Regulation.

Referring to the preferential scheme for the Western Balkans, the ACP side considered that a similar preferential treatment for the ACP countries should be retained and that the Market Access Regulation should not be revised.

The EU Co-chair responded that he failed to see the parallel between the new states of the Western Balkans emerging from a post-conflict situation and the 78-country strong ACP group. He also pointed out that the ACP trade regime needed revision as it had not produced results in terms of increasing and diversifying trade. With respect to Haiti, the EU stated that it was ready to support Haiti overcome the difficulties it was facing and that the two sides were in consultation.

c. EU's negotiations with third countries

The EU Co-chair provided an overview of the EU's trade negotiations which could have an impact on the ACP Group of countries.

With regard to negotiations with India, the EU Co-chair outlined the results of the EU-India summit which had taken place in February 2012 and explained that some difficult issues, such as the degree of tariff elimination in certain sectors, still needed to be resolved and required political decisions on the Indian side. Some domestic services reforms necessary in order for India to give satisfactory undertakings in certain areas (such as insurance, banking, legal services or multi-brand retail) were still pending. In principle, India remained fully engaged and the EU expected much activity in the following months including ministerial level engagement just before the summer 2012. The EU's aim was to substantially reduce India's relatively high tariffs, and in return India expected a tariff package which would be asymmetrically in their favour. Agriculture, which accounted for slightly more than 5% of India's exports to the EU, was hampered not only by tariffs but also by SPS requirements which India's exports of meat and milk did not meet. The EU Co-chair declared that rice, sugar and bananas would not be fully liberalised.

As regards Singapore, the free trade negotiations were close to being completed. The EU's objective was to obtain commitments which would be at least on a par with what Singapore had given to other competitors. The EU Co-chair reassured the Subcommittee that Singapore's exports were mostly advanced manufactured products and were not typically in competition with most ACP exports; hence preference erosion was not an issue.

In October 2010 the EU launched negotiations with Malaysia for an FTA with the aim of concluding the negotiations by the end of 2012. The EU was importing mostly industrial goods, palm oil and rubber from Malaysia. Palm oil was a key product for Malaysia and the MFN duty rate was 3.8%. Exports of this product from ACP countries were entering the EU mostly duty-free under an EPA or EBA so the preference margin for ACP countries was quite minimal.

Negotiations between the EU and Mercosur were ongoing and were focused on the "normative" rules-related parts of the agreement. Nevertheless market access offers were to be prepared with the hope of proceeding to an exchange in the summer of 2012. The EU's offer would take into account not only the need to be ambitious, but also the sensitivities in agriculture and the specific interests of other trading partners such as the ACP countries.

Addressing other Free Trade Agreements, the EU Co-chair recalled that negotiations with Central America, as well as Peru and Colombia had been completed and the Commission proposals for decisions on signing and conclusion of the agreement had been submitted to the Council of the European Union.

The ACP Co-chair welcomed the de-briefing and emphasised the importance of the ACP Group being kept informed of EU discussions with third countries on matters that could affect ACP-EU trade relations. In addition, it was necessary to conduct studies that would provide empirical evidence on the impact of EU's FTAs with third parties on ACP-EU trade.

The representative of Jamaica called for an in-depth analysis of preference erosion on ACP States. She mentioned in particular possible concessions with regard to imports of Indian rum and its impact on Caribbean producers.

The representative of Ghana reiterated the call for studies of the impact of EU trade Agreements with third countries on ACP-EU trade relations and emphasised that consultations with the ACP side should take place in good time, rather than when the Agreements were about to enter into force.

The EU Co-chair clarified that the EU was conducting either full Sustainability-Impact Assessment studies involving all stakeholders or in-house impact studies for each of the FTAs under negotiation. The Commission was not in a position to agree to undertake any further joint studies.

d. Impact of Anti-Counterfeiting Trade Agreement (ACTA) on ACP

The EU side outlined the content and the history of the ACTA agreement. The EU Co-chair clarified that the agreement aimed at tackling issues of particular importance also to the ACP, but it would have no direct impact on ACP countries. ACTA was an agreement creating international standards enabling the EU and ten other countries to enforce intellectual property rights in ways which are already enshrined in European law.

He emphasised that ACTA was about fighting large-scale infringements of intellectual property (through counterfeiting and piracy), which was a growing problem that threatened not only the economic wellbeing of industries but also the wellbeing of citizens.

He added that ACTA was not a measure to prevent poor countries from buying cheap medicines: it was not the EU's intention to use enforcement measures to hinder the legitimate trade in generic medicines.

The ACP Co-chair expressed support for the need to protect and respect intellectual property and shared the EU's concerns about incidences of counterfeiting, piracy and trans-border crime. However, he supported the view that the legal system to protect intellectual property rights should protect rights holders as well as the public interest. He emphasised that ACTA should be implemented in a manner consistent with WTO rules and the TRIPS Agreement, particularly the inbuilt flexibilities enjoyed by least developed and developing countries. Furthermore, enforcement of intellectual property rights should not be a barrier to legitimate trade or hinder technology transfer that was beneficial to producers and users alike.

The Commission representative clarified that ACTA, an agreement which was still subject both to national ratification and the EP consent, did not contradict other international agreements concluded by the European Union and fully respected WTO rules.

5. Commodity-related issues

a. Sanitary and Phytosanitary Standards (SPS) and other trade standards

The ACP Co-chair recognised the right of each country to take SPS measures necessary for the protection of human, animal or plant life and health but recalled that such measures should not discriminate arbitrarily or unjustifiably, and could not be applied in a manner which would constitute a disguised restriction on trade. He thought that certain measures which had been taken by the EU, or proposed for decision, went beyond the simple requirement of protection of public health, and appeared to be discriminatory and not sufficiently substantiated by sound and indisputable scientific evidence.

In this context, he mentioned the discussions within the European Union on the proposal to amend Regulation (EC) No 1881/2006 setting maximum levels for certain contaminants in foodstuffs, which provided for setting thresholds for maximum residue limits for cadmium in cocoa and chocolate products within the European Union. He informed the Subcommittee that the ACP States concerned were gathering evidence that setting these thresholds would not contribute to an improvement of well-being and health protection, including for the most part fragile segments of the population. In order to avoid the risk of taking a decision that could lead to disputes or serious, immediate and negative economic implications for many ACP States, he called on the EU to take into account, in any future decision on this issue, all the elements necessary to ensure a proper balance between the necessary and appropriate level of health protection and the minimum negative impact.

With regard to tobacco, the ACP Co-chair recalled that this commodity had been briefly discussed at the 10th ACP-EU Joint Ministerial Trade Meeting in December 2011. The ACP side recalled the request to the EU for support for the ACP position regarding the adoption of the Guidelines for Article 9 and 10 of the World Health Organisation Framework Convention on Tobacco Control (FCTC). He noted that the guidelines had been partially adopted and could now pave the way for countries or entities like the EU to prepare national regulations to enforce the recommendations included in the Guidelines.

The ACP Co-chair requested that the EU support ACP States at the WHO FCTC by insisting on the need to have a clear understanding on economically viable alternatives before adopting any further guidelines which could lead to limiting tobacco production in the countries concerned. He insisted that assistance should be provided to the ACP countries concerned under the existing instruments to formulate an economically sustainable diversification strategy as an alternative to tobacco growing. The results of this study, including a precise indication of the funding needed for implementation, could be submitted in due course to the FCTC Secretariat for consideration and inclusion in the discussions.

As regards kava, the ACP Co-chair expressed concerns about the de facto ban on kava products to the EU market from Pacific ACP states over the past ten years or so. He insisted that this issue be addressed at EU level and not only at national level.

Addressing the issue of cocoa, the EU-Co-chair explained that an opinion of the European Food Safety Agency had concluded that exposure to cadmium from foodstuffs should be reduced. Consequently, the Commission had initiated a review of maximum cadmium levels with the Member States. The draft working document currently under discussion contains a proposal for maximum cadmium levels in chocolate and cocoa powder sold to the final consumer and not for cocoa beans as such. In proposing these maximum levels the Commission had taken into account data concerning the occurrence of cadmium in cocoa/chocolate products compiled from different geographical origins. Concerns had been raised by a number of cocoa-producing countries in Latin America and the Caribbean. In order to take full account of those concerns, the Commission invited the relevant countries to submit further occurrence data by 26 May 2012. The data would be taken into account for the further discussions on this issue with a view to finding a balanced and proportionate solution.

Addressing the issue of tobacco, the EU Co-chair explained that the EU had closely followed the issue of the Canadian bill prohibiting additives and flavourings in tobaccos for sale in Canada. The EU took note of Malawi's concerns as a producer of burley tobaccos, in particular recognising the role of the tobacco sector for Malawi's economy and the livelihood of farmers. The EU Co-chair added that the FCTC Article 9 and 10 Working Group was developing guidelines on product regulation and disclosure and the EU and Canada were facilitating discussions in this Working Group.

With regard to kava, the EU Co-chair clarified that there was no specific harmonised EU legislation concerning the use of kava in foods, including food supplements. The use of such a substance in food was subject to the general rules and conditions of the General Food Law Regulation (Regulation EC No178/2002). This follows the principle that a substance cannot be used in food if it is unsafe, i.e. injurious to health or unfit for purpose. Food business operators were responsible for ensuring food safety, under the control of Member States which must take the necessary measures to enforce the rules.

However, recognising the possible impact on the economies of the countries concerned, the Commission drew this to the attention of Member States. In 2004, the Commission also encouraged the funding of a study on the scientific justification for the market restrictions. The study suggested that the actions taken by some Member States were not justified since only a few of the reported cases of liver failure were linked to kava intake. As a follow-up, the Commission also sponsored a stakeholder meeting which set up an “International Kava Executive Committee” (IKEC) to coordinate future activities with the objective of rescinding the marketing ban in some EU Member States.

The EU Co-chair declared that the EU was open to further discussions on new developments in this matter and on how best to assist Pacific stakeholders in voicing legitimate concerns.

b. CAP reform update

The Commission representative outlined the Commission proposals for the reform of the Common Agricultural Policy, focusing on three aspects which are of key importance to ACP countries: sugar, cotton and export subsidies. With regard to sugar he declared that the Commission proposals provided for a continuation of the reforms embarked on in 2006. He emphasised that the EU would continue to provide duty-free quota-free access to the European market for all ACP producers and that a high MFN tariff was expected to be maintained. With regard to cotton he underlined that the EU was not a major cotton producer as it accounted for 1% of global cotton production. Therefore EU subsidies did not disrupt the global cotton market. He explained that coupled support for the cotton producers constituted a part of the Treaties and it was therefore extremely difficult to abolish. With regard to export subsidies he declared that the EU had curbed its trade-distorting practices and the majority of EU support was no longer trade-distorting. He suggested that EU-ACP discussions should focus more on support for ACP agriculture than on the few remaining EU trade-distorting practices.

The representative of Mauritius, addressing the issue of the EU sugar market, informed the Subcommittee that, according to a study prepared by the Overseas Development Institute, the reform of the EU sugar market and the end of the quota regime would lead to a decrease in EU market prices and have a negative impact on ACP sugar exports.

The ACP Co-chair suggested that the CAP reform should also have a direct impact on cotton. The reform should provide an opportunity to modify the EU's policy on subsidies in this sector, bringing it more into line with commitments made at international level. He called on the EU to carry out an in-depth sectoral analysis to evaluate the possibility of containing the negative external effects of the EU safety-net instruments. Once all the sectors concerned have been identified, the ACP Group and the EU would need to seek mechanisms for managing the use of such instruments to minimize the negative effects on ACP producers.

The Commission representative declared that any studies regarding the possible consequences of EU sugar market reform would be carefully analysed by the Commission services.

6. WTO issues

The ACP Co-chair declared that, in the light of the difficulties with the Doha Round, the WTO would continue to remain relevant in the multi-trading system only if it could foster positive measures to enable poorer countries to achieve their development objectives. The ACP was not in favour of introducing new issues into the global trade body to address emerging challenges such as climate change, food security, trade, exchange rates and energy. The ACP countries considered that the Doha agenda was still relevant and that the outstanding implementation issues of the Uruguay Round should first be addressed before venturing into new areas.

The EU Co-chair declared that concluding the Doha Development Agenda (DDA) remained of major importance for the EU as it was crucial for development, for the world economy, and for the whole multilateral rules-based trading system. There was obviously a stalemate in the DDA process and it had to be overcome by focusing on areas where progress was feasible. The EU was supporting LDC accessions to the WTO, where good progress was being made. The EU was also committed to other LDC issues such as duty-free, quota-free access and cotton, and continued to support this without any conditions.

7. Preparations for the 11th Meeting of the Joint ACP-EU Ministerial Trade Committee (JMTC)

The ACP side underlined the importance of the JMTC and the parties agreed that the JMTC meeting would be held on 26 October 2012.

8. Trade-related capacity-building programmes

The EU representative outlined the state of implementation of the TradeCom Programme geared towards supporting ACP countries in regional trade negotiations and the Multilateral Trading System (MTS) Programme supporting the integration of ACP countries in that system. He added that a new Technical Barriers to Trade (TBT) programme would start in early 2013 with the objective of strengthening the capacity of ACP countries and regions to tackle TBTs on external markets. The Commission and the ACP Group were discussing the possibility of continuing the Trade.Com/MTS type of support in a new programme should financing be available in the short term.

The ACP Co-chair reacted by declaring that the ACP Group appreciated this aspect of the partnership and confirmed that EU support in this domain had been beneficial. He invited the EU to be receptive to proposals from the ACP with regard to improving the rules and procedures applicable to the implementation of capacity-building activities.

9. Any other business.

The ACP Co-chair sought clarifications regarding questionnaires which had been sent to ACP capitals via EU delegations with relation to an amendment to Regulation No 1418/2007 on the movement of non-hazardous waste to non-OECD countries. The ACP side asked for an extension to the deadline for replying to the questionnaire, which had originally been set at 30 March 2012.

The EU Co-chair clarified that the Commission was requesting EU delegations to submit notes verbales to the ACP Governments including two questionnaires. The EU delegations had addressed those to ACP national authorities in charge of waste regulation. The EU Co-chair explained that 30 March was not a rigid deadline and the Commission would be able to take into consideration all relevant and complete answers received before the end of May. This time limit was necessary in any case in order to incorporate the data received into the draft amending Regulation planned for adoption by the end of June 2012. Hence even data received after that date and in future would be useful and welcome.

The meeting was adjourned at 13.30.
