



*Project Management Unit (PMU)
Capacity Building in Support of the Preparation of
Economic Partnership Agreements (EPA)*



*Unité de gestion de projet (UGP)
Renforcement des capacités en appui à la préparation
des Accords de partenariat économique (APE)*

Market Access in an Economic Partnership Agreement

Negotiating Skills Manual



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Section 1.
Introduction to the Manual

1.1 Scope and goals of the Manual

1.1.1 Scope

This Manual has been produced as part of a training programme being organised by the EU–ACP Project Management Unit¹ with technical support from the Institute of Development Studies (IDS), to provide a transfer of negotiating skills. It aims specifically:

to develop skills of the [ACP] technical support teams in preparing for negotiations on specific issues and through negotiation simulation exercises. It will also provide the lead negotiators with enhanced negotiating skills and a greater understanding of the dynamics of working with technical support teams.

A series of regional Negotiating Skills Workshops are being organised in 2005/6 for ACP government and regional secretariat professionals. They are focusing on two areas that are under negotiation in the Economic Partnership Agreements (EPAs): market access and development. The Workshops are not intended as a preparatory meeting for the EPA negotiations; all the regions have their own institutional arrangements for forging a negotiating position *vis-à-vis* the European Union (EU). Nor are they simulations designed simply to impart negotiating skills; many, if not all, of the participants are experienced negotiators.

Rather, they are a bit of both – a hybrid of the ‘real’ and the ‘simulated’. Participants use real data (supplied by the Workshop organisers) about their trade, trade policy and trade-related position *vis-à-vis* the EU. This Manual is another of the resources made available to participants of the Workshops.

It has been edited to be a free-standing document so that it may be used as a resource by a wider cross-section of government officials and stakeholders concerned with the EPA negotiations. This has involved, *inter alia*, the removal of region-specific data and analysis.

1.1.2 Outcomes

The Manual provides guidance to participants in the training programme who, by the end, are able to:

- ◆ access, understand and **utilise data and information** related to market access in the context of wider national and regional development needs for the purposes of effective negotiation;
- ◆ **understand priorities** and positions of key actors in the negotiation process;
- ◆ apply relevant **negotiation techniques** and approaches in order to achieve commitment to agreed outcomes for all parties;
- ◆ **identify gaps** in information and strategies required to support future negotiations and appropriate follow-up action at national and regional level;
- ◆ **build relationships** with regional partners as part of a long-term process of co-ordination around market access and development.

It is hoped that those reading the Manual as a free-standing document will find it helpful in reaching the same goals.

¹ Project Management Unit (PMU) for capacity building in support of the preparation of Economic Partnership Agreements.

1.1.3 Basic principles and learning needs

This training aims to address different learning needs that arise in relation to negotiation on market access and the links with development needs. The fundamental principle that underpins the training approach is one of collaboration. This is may be distinguished from approaches based on conflict and competition which may lead to short-term gains but are highly unlikely to lead to significant, long-term collaboration and partnership for the purposes of trade. Collaboration is not enough in itself, however, since to be effective it requires complementarity of interests (mutual giving and getting), resulting in commitment by partners to an agreement and fulfilling it.

Building on these principles, a series of learning needs can be identified and categorised into knowledge and skills. The main elements are shown in Table 1, which also lists the approaches to negotiation that tend to lead to favourable outcomes. The training addresses these through an holistic and systematic approach, to encourage learning that will result in positive change for those engaged in the training programme.

Table 1. Learning needs and approaches to negotiation

Core knowledge	Core skills	Approaches to negotiation
Knowledge of self Knowledge of partners Knowledge of content (data, legislation, commodities, etc.) Knowledge of process	Communication skills <ul style="list-style-type: none"> • Observation • Listening • Speaking/Questioning Articulating complex problems and arguments <ul style="list-style-type: none"> • Identifying needs and resources • Identifying and analysing the interests of other parties • Reframing, responding and refocusing positions, questions and arguments • Identifying and prioritising options • Articulating criteria by which a decision is made Achieving consensus <ul style="list-style-type: none"> • Reaching agreement on best available option 	Collaborative approach Openness to range of options Future-oriented Motivated to participate (for self, partners and development) Respectful of negotiation partners Reliable/committed to fulfil an agreement Trust Issue/problem oriented

This Manual deals mainly with the first column of learning needs set out in Table 1: core knowledge. It introduces the knowledge that countries will need in order to articulate, and then to advance, their market access and broader development interests during the negotiations. Section 2 provides a bird's eye view of this information to allow both Workshop participants and a wider readership to review their knowledge and identify the areas in which they may wish to dig further. Section 3 provides a more detailed treatment of the issues summarised in Section 2.

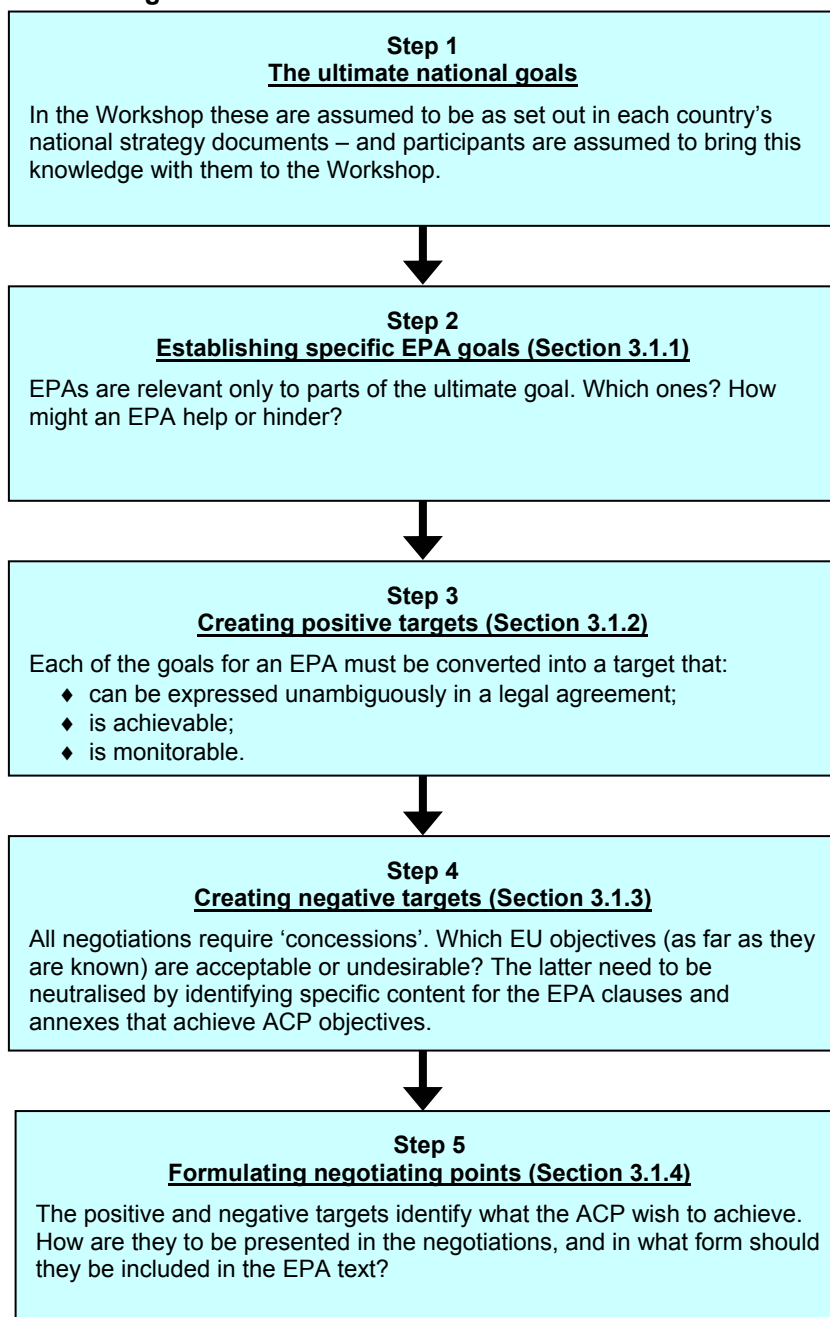
Section 2. Quick Guide

This section of the Manual provides an overview of the processes and knowledge described in Section 3. Although much of it will be well understood already by Workshop participants who are experienced negotiators, it may be of use to a wider readership as well as government technocrats. This bird's eye view (which is cross-referenced to Section 3) allows users of the Manual to recognise the broad thrust of the Manual and to dip into the detail in those areas where they judge it to be desirable.

2.1 Translating national strategy into legal text (Section 3.1)

An EPA will be a legal document. If it is to support a national development strategy, the EPA's clauses and annexes must require or permit specific actions that are desirable and prohibit or limit those that are undesirable. Translating broad goals into detailed text is a formidable challenge. A systematic approach can be helpful (Figure 1).

Figure 1. From economic goals to an enforceable EPA



2.1.1 The four steps to strategy

- i. What is good in Cotonou and is to be retained?
- ii. What is wrong with Cotonou? How must it be changed?
- iii. What is missing from Cotonou?
- iv. How can EU objectives be turned to advantage?

2.1.2 Creating targets; writing clauses and annexes

If goals cannot be written concisely, in unambiguous legal terms, they cannot be incorporated into the EPA. If they seek things that are unachievable, they won't be achieved! If they are not monitorable the EU cannot be held to account. The EPA will include long annexes specifying which products are to be liberalised, when, and what origin rules apply. If ACP states do not produce their own lists they cannot ensure that the EPA reflects their interests.

In order to arrive at a final negotiated agreement, initial positions will need to be subject to change as the negotiation progresses. Thus negotiators must be prepared to continuously reconsider and rewrite positions. An unchangeable position can lead to the negotiations becoming stalled, often to the detriment of the position holder.

The negotiators need to focus on how a position meets their interests, rather than on the position itself. If a particular position or target is causing a problem either to other countries in the region or to the EU, it is often possible to develop an alternative position that still meets the country's interests while also being acceptable to the other side or sides. Capacity to continuously develop new positions that meet the country's core interests is a key negotiation skill.

2.2 Know your partners (Sections 3.2 and 3.3)

The extent of your knowledge about your ACP and EU negotiating partners will vary – but to make optimum use of the information that is available you need to have a clear understanding of what – precisely – you want to see in the EPA. None of the EPA parties has identical interests: the better you understand your own, the more successful you will be in establishing the areas in which they are:

- ◆ similar to those of your ACP partners;
- ◆ dissimilar to those of your ACP partners;
- ◆ 'pushing on an open door' in the EU;
- ◆ fundamentally opposed by the EU.

Reciprocity presents a particular challenge. It could undermine rather than support ACP regional integration. Reaching a consensus among the ACP signatories of an EPA is crucial (Figure 2).

2.3 Understand the negotiation (and post-negotiation) process (Section 3.4)

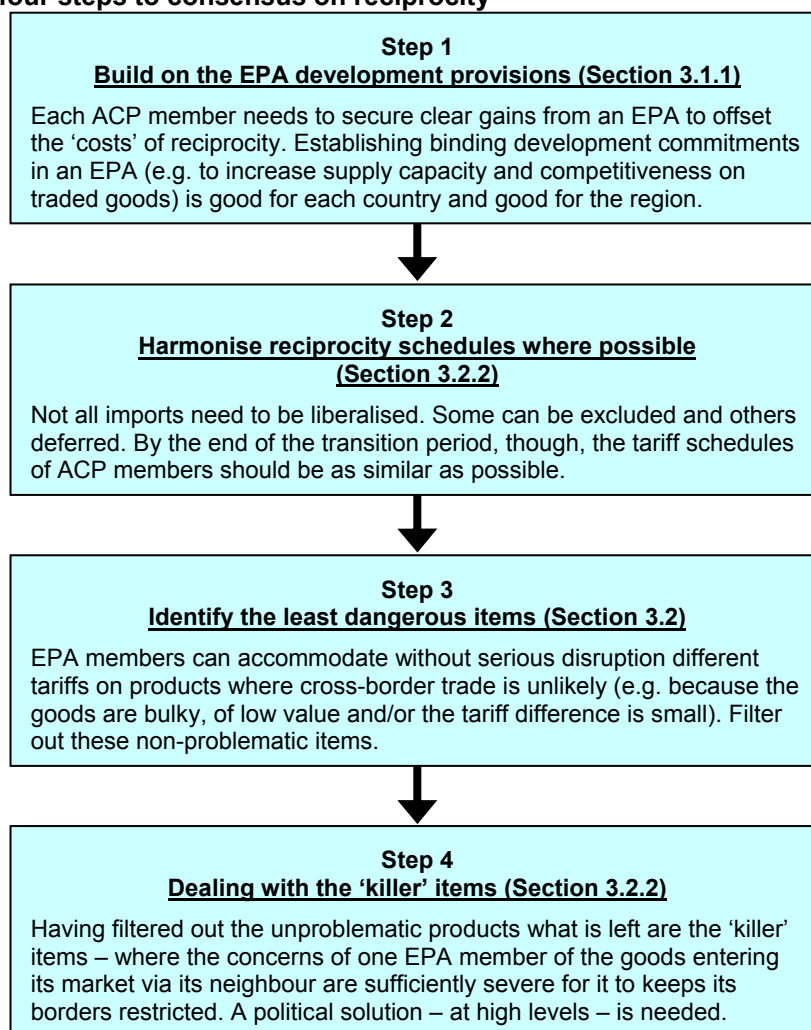
Where and when must the details of a coherent ACP position be settled? How can the EU be influenced via representation to actors other than the Commission? What technical capacity does the Commission have to assess draft liberalisation annexes that the ACP submit and press for changes?

What may happen if an EPA is not signed by 31 December 2007? What happens if it is signed and then:

- ◆ an ACP state fails to implement part of its commitments?
- ◆ it is challenged in the WTO?

These are all imponderable questions – definitive answers are not possible. But each delegation needs to form (and re-form as events unfold) its best understanding of the range of most likely possibilities.

Figure 2. The four steps to consensus on reciprocity



2.4 Three negotiating techniques

The achievement of these tasks can be facilitated by a number of techniques that are frequently present in successful negotiations.

Technique 1 – Focus on Interests: Negotiators must be prepared to continuously reconsider and rewrite positions and targets without compromising their interests. An unchangeable position can lead to the negotiations becoming stalled.

Technique 2 - Communication: Negotiators need to use communication and dialogue skills to promote their interests successfully while accommodating the interests of others. They include the ability to assess the perspectives and interests of others, reframe questions, articulate criteria for decisions, respond positively to conflictual, aggressive or negative situations and refocus discussions.

Technique 3 – Strategy Building: Effective negotiators need to identify their team's core capabilities, the phases of the negotiation and the techniques appropriate to each phase.

Section 3. Core Knowledge

3.1 Knowledge of self

Tip: No country (or individual) can negotiate effectively if it does not know what it wants. Perhaps the most important single factor determining the outcome of the negotiations is whether a country has clear, realistic and prioritised objectives.

Each country delegation needs knowledge that is several layers deep.

1. The **ultimate goal**: which will often be the achievement of the country's development strategy and the Ministry's contribution to this strategy.
2. The **specific goals** for the negotiations: how could an EPA help to advance this strategy?
3. The **positive targets**: what features – precisely – would need to be in an EPA for it to fulfil the goals of advancing the development strategy?
4. The **negative targets**: given what is known about EPAs, what features would actually retard achievement of the strategy?
5. **Negotiating points**: what – precisely – must be requested in the negotiations to achieve the positive targets, and what potential demands must be rejected to avoid the negative targets?

The first of these – the ultimate goal – will be a given during the training Workshop. All country delegations will come to the Workshop with knowledge of their country and ministry's strategy. All of the rest will need to be formulated by each delegation and, in some cases, re-formulated as the negotiations progress.

3.1.1 *Specific goals: how could an EPA help?*

Tip: Think 'outside the box': what development support can be 'hung' on the 'pegs' in an EPA?

EPAs will have both trade and development dimensions: each could contain elements that would support members' strategy. The negotiation Workshop is specifically on market access – but delegations should 'think outside the box' and identify development instruments that could be linked to the market access commitments being negotiated (see Box 1).

3.1.1.1 *The four steps to strategy*

This will be easier to do if delegations think through at the outset all of the ways in which an EPA could help.

Step 1: identify the good parts of Cotonou that must be retained. There are many good features of Cotonou. But which are the highest priorities for retention – the parts that have been effective and valuable? They could include favourable access to the EU market for ACP exports, the cumulation provisions of the rules of origin, the aid provisions and the joint institutions.

Different countries benefit to different degrees from the Cotonou provisions. For some, trade preferences are very important; for others they have been important but are being rapidly eroded in ways that could be compensated for in an EPA, whilst in others they will only become important if the country diversifies its exports into products for which the preferences confer a commercial advantage. Each country needs to know how important preferences are for its current and potential future

Box 1. Thinking outside the box

The EPA will set the formal terms under which the exports from each party will enter the markets of the others. But there is much more to trading than just tariffs and formal requirements on standards and procedures. Trade preferences are a form of ‘negative’ assistance: they relieve ACP exporters of certain obligations borne by their competitors. But the ACP also need considerable ‘positive assistance’, not only to help with exports but, especially, to deal with reciprocity.

The EPAs should make ‘positive assistance’ commitments to support trade as explicit as possible. The many desirable objectives of development assistance described in the Cotonou agreement is one place to start – but it can be taken further. The objective of economic and trade co-operation according to Cotonou, is to enhance ‘the production, supply and trading capacity’ of the ACP and ‘their capacity to attract investment’ [Article 34:2]. Among the many ways foreseen to achieve this (and other Cotonou) goals) are: catalysing and leveraging flows of private savings [Article 21:2a]; business development through finance and technical support [Article 21:3]; support for agricultural production, and competitive industrial mining and energy sector and trade development [Article 23].

An EPA can build on Cotonou in three ways:

- ◆ by highlighting special development action needed to support trade and earmarking aid funds for this purpose;
- ◆ by boosting ACP domestic production efficiency both to facilitate exports and to help compete with EU goods under reciprocity;
- ◆ by making development assistance enforceable.

This last point responds to a standard ACP complaint that agreements with the EU promise the earth but Europe does not deliver. Whilst an EPA cannot change this fundamentally by forcing the EU’s hand, it can make the action the ACP are required to make conditional upon Europe fulfilling its part of the bargain. In particular, ACP liberalisation on reciprocity could be timed to follow the successful completion of development work foreseen in the EPA.

exports; and it needs the same sort of knowledge in respect of all other aspects of Cotonou.

Step 2: identify what is wrong with Cotonou: an EPA would ‘help’ if it removed some of these shortcomings. But the problems have to be specified very precisely.

The rules of origin may be unduly onerous and health standards may change too frequently and be too stringent. But voicing a general complaint of this kind will not result in any change. To be ‘negotiable’ a delegation must be able to argue precisely what change they want to a specific origin rule or health standard (see Section 3.4).

Step 3: identify instruments that are not in Cotonou (or are not implemented). If the fundamental trade problem is inadequate supply, why not use the EPA to obtain financial and technical assistance to increase supply?

If infrastructure is the bottleneck, the development dimension of an EPA could provide resources to alleviate it. The Cotonou Agreement lists a vast number of development actions that can be supported – but many never are. The EPA negotiations provide an opportunity to insert provisions increasing the likelihood of specified actions being taken (see Section 3.2).

Step 4: turn the EU’s demands to your advantage. The one thing that everyone knows about EPAs is that the EU wants ‘reciprocity’ – ACP states must reduce to zero their tariffs on ‘substantially all’ imports during an implementation period (probably of 12 or more years). Can you extract a ‘price’ for this?

This is normally seen as a ‘concession’ by the ACP – and it will often contribute to the ‘negative targets’ of countries. But in many cases it is not wholly problematic. Few ACP states attempt to maintain high tariffs on *all* imports. There are some products that are protected, and some that are not. The objective of revenue raising is

often as important, or more important, than the protection of domestic production. Moreover, non-least developed (LDC) ACP states will probably have to reduce some tariffs anyway if the Doha Round is completed.

EPAs provide an opportunity to commit the EU to ‘pay for’ policy changes that the government may be willing to make anyway, or may have to make as a result of the Doha Round. Why not seek to negotiate that tariffs will be cut in line with the successful completion of EU-funded projects to establish new revenue sources (such as sales tax or value-added tax), or to enhance the efficiency of domestic producers so that they can compete with imports? This point is taken up in Section 3.4.

3.1.2 Positive targets

Tip: Goals must be translated into a set of targets. If these cannot be written concisely, they cannot be incorporated into the EPA.

Each of the goals for an EPA has to be translated into a target that:

- ◆ can be expressed unambiguously in a legal agreement;
- ◆ is achievable; and
- ◆ is monitorable.

The first requirement means that complex objectives may need to be broken down into their component parts so that each can be expressed succinctly and unambiguously in the text of the EPA (see Box 2).

Goals must be achievable. If the aim is to use the EPA to reach targets that were not attained under Lomé and Cotonou, then the targets must involve actions:

- ◆ over which governments have power;
- ◆ which will contribute to the goal;
- ◆ and on which action can be enforced.

What sorts of thing is the EU empowered to do (if it were to agree to them during the negotiations)?

Take as an example the goal of increasing foreign private investment. An EPA might include the goal of encouraging foreign private investment in ACP states – but this is not in itself an achievable objective. The EPA cannot bind private firms directly – it will be an agreement between governments; the EU cannot command European firms to invest. For the goal to be reached it needs to be translated into objectives that are achievable, e.g. an EU commitment to reform its tax laws to support foreign investment, or to fund a risk guarantee facility or to support an ‘investment centre’ in an ACP state or whatever.

Box 2. Breaking down complex objectives

The Cotonou agreement is full of objectives that are so broad that implementation cannot be monitored – such as ‘achieving rapid and sustainable job-creating economic growth’ [Article 20:1a]. A desirable objective such as this needs to be broken down into a set of targets, some of which will be relevant to trade, that can be monitored.

Economic growth in agricultural exporting countries requires, for example, functioning and well-resourced Government extension and animal health services, backed by appropriate research. Since the EPA aims to enhance opportunities for ACP exports and to increase imports (both regional and from the EU) its successful achievement will require the rehabilitation of any such services that are not currently functioning – and support for this will normally be required over a long period of time.

Sustainable job-creating economic growth in agricultural economies also requires adequate rural and trade physical infrastructure. Hence the objective of rapid growth may require commitments to build roads, ports and airport facilities.

These are examples of achievable objectives, but how can the ACP increase the likelihood of implementation? A problem with Cotonou is that although it legitimises a huge range of developmental actions it does not *require* the EU to support any particular ones. If the EU refuses to support an export promotion project, for example, an aggrieved ACP state has no recourse to arbitration. If an agreed project is implemented painfully slowly an ACP state may complain but it can do nothing to insist that action accelerates.

EPAs must have as many measurable targets as possible and an enforcement mechanism if they are to improve on Cotonou. But this will only work if the objectives themselves are monitorable.

A non-monitorable goal: increasing foreign private investment by, say, €100 million within ten years. This is not something that the EU has the power to promise even if it were willing to do so.

A monitorable goal: a commitment to support a €100 million airport infrastructure project for fresh agricultural produce. It is also *possible* to frame an EPA in such a way as to make an ACP country's liberalisation of its agricultural sector conditional upon the timely completion of this project – see Box 2.

3.1.3 Negative targets

Tip: All negotiations require 'concessions' – the task is to prioritise anticipated EU demands to identify the least desirable and how to circumvent them.

Compiling a list of the things that *should not* be in an EPA requires knowledge of the EU. It also requires each ACP state to understand the interests of its regional partners and where they do not overlap, as well as where they do. Both of these sources of negative targets are taken up in more detail in Section 3.2, but enough is known about the EU's objectives to provide illustrative examples here. As with positive targets, negative ones need to be established in a precise, monitorable form.

3.1.3.1 Avoiding the dilution of Cotonou

An important negotiating target is to avoid anything that would reduce the benefits of Cotonou identified in Step 1. In order to protect a preference, negotiators need to know precisely which exports obtain a commercial advantage from the status quo. This may require officials to consult private sector representatives.

If preferences have already been eroded (see Section 3.3) no point is served by wasting negotiating capital trying to retain the current regime. Instead, compensating improvements to the trade and the development elements of EPAs need to be added to the positive targets list.

3.1.3.2 Neutralising unwanted innovations

The main known innovation demanded by the EU is reciprocity. Negotiators need to be clear on which sectors they wish to continue to protect and for which liberalisation must be deferred until the end of any transition period. As explained in Section 3.2, not all imports will need to be liberalised, and for some that are tariff cutting will be deferred, possibly until 2020–30.

Even so, not every sector can be excluded from liberalisation – most will have to be included. So careful prioritising is needed to select the few that remain protected. Similarly, the EU is

unlikely to accept all liberalisation being deferred until the very end of the transition period. Country delegations need to create their own priority lists to negotiate with the EU, accepting that a certain proportion will have to be liberalised in the early and mid stages of the implementation period.

Another important negative target for many ACP countries is to avoid being forced to open their agricultural markets to subsidised EU exports. Avoiding this outcome would be a negative target.

One way to achieve it would be to exclude as many agricultural products as possible from liberalisation. But it may not be possible to exclude them all – and governments may need to reserve part of the exclusion basket for industrial goods. An alternative would be to make specific provision in an EPA for countervailing duties to offset EU subsidies (see Box 3).

Box 3. Substituting countervailing duties for tariffs

Reciprocity requires the ACP to remove tariffs on 'substantially all' imports from the EU. But tariffs are not the only tax levied on imports. It is standard WTO practice to allow, under certain circumstances, countervailing and anti-dumping duties to be levied in addition to tariffs. Both are triggered when the goods in question are being subsidised by the exporter.

Most EU agricultural exports are subsidised – and are likely to remain subsidised for many years to come. The OECD Secretariat regularly calculates the level of subsidy given to agriculture by the EU and other OECD states.

The ACP could negotiate that they be permitted to impose countervailing duties on imports of agricultural products from the EU until such time as the subsidies are removed. And, they could, for example, use the OECD Secretariat calculations to indicate when this has happened.

Hence, as tariffs fall they would be replaced, initially, by equivalent (or higher) countervailing duties. These would only be reduced as the EU's subsidies fell, by which time ACP farmers would be able to compete 'on a level playing field'.

There are other ways, too, in which the ACP may seek to provide additional protection to specific areas of domestic production than is possible just by excluding some goods from any liberalisation and by deferring others to the end of the implementation period. One is by drafting the rules of origin in a way that supports domestic industry – but this could cause intra-regional problems (see Section 3.2.2).

3.1.4 Negotiating points

Tip: The EPA will be a legal treaty framed by negotiators and set in words by legal draughtsmen. All targets must be converted into precise language that can be inserted into the EPA text.

Each target has to be set out in precise text that can be incorporated into one or more clauses or annexes to the EPA. How can this be done? Take the case of ACP tariff objectives.

If EPAs follow the architecture of the EU's other trade agreements, the ACP will have to list (in annexes) every single product that they wish not to liberalise fully on the first day of implementation (i.e. 1 January 2008 if the negotiating timetable holds). The tariff for any product not specifically listed as being liberalised at a later date (or not at all) will have to be reduced to zero on day 1. To have any effect, negative targets on reciprocity must be translated into lists of products for which liberalisation is to be deferred/excluded.

This is a major task! Some states may be able to simplify the process by listing only broad (Harmonised System (HS) 4-digit) product groups. But if a state wants to exclude or defer only some 6- or 8-digit items within a broad product group (in order to fit within whatever is agreed to represent 'substantially all' trade) it will have to provide its lists at this level of disaggregation.

On rules of origin, too, negotiators will have to produce draft texts of any rules that they want.

Any safeguard mechanisms to keep out subsidised EU exports will need to be drafted in terms that achieve the desired objective. The level of detail required will depend on what ACP negotiators wish to achieve.

A quite simple clause will suffice if the objective is just to allow governments to impose a surcharge if import prices fall sharply or volumes surge, and then to discuss its justification after the event (see Box 4). But if negotiators want to be able to impose a continuing countervailing duty to offset the EU's structural subsidies then the EPA provisions must be drafted in much more detail, specifying the reference trigger and the duty rates that will apply to every commodity.

They will have to be drafted in such a way as to facilitate both ACP exports to the EU and intra-regionally whilst helping domestic producers compete with imports from the EU.

Box 4. An agricultural safeguard clause

The concept of having 'safeguards' against unwanted surges in imports following liberalisation is well established in international trade agreements. The TDCA contains no fewer than four provisions on safeguards and anti-dumping.

A common complaint with WTO provision is that they require extensive documentation and 'procedures', making them unusable by poor countries with weak public services. But the TDCA agricultural safeguard clause [Article 16] overcomes this by allowing the parties to take action first and talk about it afterwards. The full text is:

Notwithstanding other provisions of this Agreement and in particular Article 24, if, given the particular sensitivity of the agricultural markets, imports of products originating in one Party cause or threaten to cause a serious disturbance to the markets in the other Party, the Cooperation Council shall immediately consider the matter to find an appropriate solution. Pending a decision by the Cooperation Council, and where exceptional circumstances require immediate action, the affected Party may take provisional measures necessary to limit or redress the disturbance. In taking such provisional measures, the affected Party shall take into account the interests of both Parties.

Negotiation Technique 1 – Focus on Interests

If agreement is to be reached, initial positions will need to be subject to change as the negotiation progresses. Negotiators must be prepared to continuously reconsider and rewrite positions and targets. They must do this without compromising their interests. An unchangeable position can lead to the negotiations becoming stalled.

*The negotiators need to focus on how a position meets their **interests**, rather than on the position itself. If a particular position or target is causing a problem either to other countries in the region or to the EU, it is often possible to develop an alternative position that still meets the country's interests while also being acceptable to the other side or sides. This involves an ability to:*

- *enquire into interests of partners both prior to and during the negotiation sessions;*
- *develop capacity to contribute new positions that meet the country's core interests and keep the negotiation moving;*
- *hold core positions that cannot be changed without compromising the interests of the country;*
- *keep interests at the forefront of the discussions, and frame interests in ways that are appreciated by the all parties.*

3.2 Knowledge of partners

Tip: All parties have different objectives, concerns and areas where compromise is possible. The more accurately you are able to distinguish sticking points from areas of potential compromise the better.

3.2.1 The EU

Tip: The EU is not monolithic or all-powerful. Find its 'pressure points'.

3.2.1.1 What it is seeking ...

The negotiating mandate of the European Commission requires it to seek many things from an EPA. In reality it will have its own priorities – and a part of the ACP negotiating strategy must be to identify these to the extent possible.

Within the market access part of the negotiations there is one key objective that applies to all ACP regions, and others that are more or less important depending on the region. The universal key objective is the demand for reciprocity. It is key in the sense that it is:

- ◆ a requirement if the EU is to attain its objectives in the WTO;
- ◆ problematic for all ACP states.

The first bullet means that it is probably not a demand that can be 'wished away' through negotiation. The second means that the negotiations will be tough. It is critical, therefore, to understand what latitude the WTO's requirements provide and what use the ACP can make of them.

The main latitude is that to meet the requirements of WTO Article XXIV an agreement does not need to liberalise 'all' trade, only 'substantially all' (see Box 5). And it does not need to make this liberalisation immediately, only within a reasonable period of time. These two vague requirements provide scope for the ACP to exclude or defer liberalisation on sensitive items – and to present these to the EU as being wholly 'WTO compatible'.

3.2.1.2 ... and what it has to lose

But will the EU accept ACP liberalisation schedules that have been drafted in this way? It is natural to assume that the EU has all the cards – that it can dictate the terms in any EPA. And it is true that the EU is the stronger party. But the ACP do have some negotiating assets. The challenge is to use them to best effect.

The EU would face an embarrassment if there were no EPAs either in place or in prospect by 1 January 2008. This is the date that:

- ◆ the EU has set as the target for the existing Cotonou trade provisions to be replaced by the new regime;
- ◆ the WTO waiver for Cotonou expires.

Because of this the EU would be obliged to do *something* – but all the options have disadvantages. Consequently the EU can be expected to exert maximum political pressure during 2007 (and especially the last six months) to bring a deal to closure. Such pressure might be felt far beyond the EPA negotiating rooms. It is not something that can be fully covered within the framework of the EPA negotiation simulation. Even here, though, the ACP have some defence. For the tactic to 'work' most if not all ACP states must join an EPA.

Box 5. What is 'substantially all' trade?

The EU has stated that EPAs must be WTO compatible, and this means that the provisions on goods trade must comply with the requirements of Article XXIV. This allows members of free trade agreements (FTAs) and customs unions (CUs) to discriminate in favour of each other and against other WTO members – but it sets certain standards for the scope of the trade agreements. One is that an FTA should result in free trade on 'substantially all' goods.

'Substantially all' is clearly not 'all'; hence, some ACP imports will not need to be liberalised in an EPA. But which ones and how many?

The answer will be part of the negotiations – ACP states will be able to exclude from liberalisation what they can negotiate. But some guidelines can help distinguish plausible ACP demands that have some chance of success from implausible ones. This is described in more detail in the 'Reciprocity Handbook' being circulated to all participants in the negotiating Workshop.

In brief, it looks likely that the ACP will be able to exclude from any liberalisation a basket of goods that accounts for, perhaps, 20 percent of the value of their imports at present from the EU – and possibly slightly more. A key task, therefore, is to see whether all of the important products that need to be excluded can be included in this basket. If not, the ACP must negotiate for the 20 percent to be increased – but the negotiations are more likely to succeed if they can show precisely which additional items could be excluded if the threshold were raised to, say, 25 percent. Wild demands that 30 percent of imports be excluded from liberalisation stand little chance of being accepted; a carefully crafted list of excluded products that just happen to account for 29.5 percent of imports in 2003 stands a much better chance.

Not all products will be liberalised on 1 January 2008. There is likely to be a transition period of at least 12 years. During the early phases it may be possible for countries to 'liberalise' only products for which the current tariff is already zero or is very low. Liberalisation of the higher-tariff items might be deferrable until, say, 2025. To achieve these objectives, though, each ACP state will have to list precisely which goods are to be liberalised on which dates (or not at all). This requires a lot of detailed preparation.

An EPA that included only one-quarter of the countries in a region, for example, would not remove the need for the EU to do *something* about the remainder.

It could take the radical step of 'downgrading' all non-EPA ACP states to the Generalised System of Preferences (GSP), re-imposing tariffs that have not been applied to some countries since 1975. This would provoke vocal opposition not only from NGOs in Europe but also from importers, and would sit uneasily with the EU's global stance favouring 'liberal trade'. It is probably the least likely outcome.

At the other extreme it could simply 'stop the clock' – allow the negotiations to continue as if no deadline had passed. This would undermine the EU's credibility in the negotiations and the respect that any future 'deadlines' would command.

Possibly the most likely outcome is that there would be pressure to agree a 'proto-EPA': an accord that failed to resolve the main sticking points but demonstrated a resolve to move forward and included a timetable for further negotiations. The implications of this for ACP negotiating strategy are set out below in the Section 3.4

3.2.1.3 What can the EU do to make EPAs attractive?

Within the area of market access, what can the EU offer to hesitant ACP states to encourage them to join an EPA? It is widely expected that the Commission will be willing to offer to all EPA members the market access already provided under the 'Everything But Arms' (EBA) regime to the least developed. That is tariff and quota free access for virtually all exports.

This is a necessary but far from a sufficient condition for dealing with preference erosion (see Box 6). It is very unlikely that preference erosion will stop; indeed it is very likely to continue and possibly accelerate. Each ACP state must determine, therefore, how valuable its 'preferences' will be by 2008 (and also by 2020 when it may have to start taking the

‘difficult’ steps to implement reciprocity). This will help it decide how much the EU will need to offer in addition to EBA in order to make reciprocity an acceptable ‘price to pay’.

3.2.2 The ACP

Tip: ACP states must understand each others’ positions if they are to succeed as a region in the negotiations.

Different ACP states will come to different conclusions on whether or not the ‘cost’ of reciprocity is exceeded by the ‘benefits’ of what the EU agrees to offer in an EPA. As EPAs will be ‘regional agreements’ they must be acceptable to all the ACP members as well as to the EU. ACP interests differ: negotiating compromises between the ACP members may be just as difficult and time consuming as reaching agreement with the EU. Each country delegation must seek to understand their ACP partners’ interests.

3.2.2.1 Different export interests

Some ACP states are very heavily dependent on the trade provisions of Cotonou and can afford to take few ‘risks’ in negotiating a successor. But not all do so (see Box 7).

At the other extreme there may be countries that see neither great trade nor development advantages from an EPA. Consequently they may be unwilling to concede anything on ‘reciprocity’.

In the middle are countries that may obtain little commercial advantage from the trade provisions but believe that EPA membership will confer substantial aid and other development benefits. They will be influenced by the trade-off between these benefits and the ‘costs’ of reciprocity.

3.2.2.2 Different reciprocity strategies

Even among countries that have a strong interest in securing continued preferential access to the EU market for their goods exports there will be differences in the architecture of their reciprocity offer. As explained in Box 5, each country will wish to select in detail the items that it will not liberalise at all under an EPA, and those that it wishes not to liberalise until 2020 or later. These product lists may vary greatly between ACP states. Yet any ACP

Box 6. How preferences are eroded

A trade preference is only ‘useful’ if it confers on ACP exporters a competitive advantage over others or results in their receiving a higher price than they otherwise would. Any change that reduces such advantages has the effect of eroding preferences.

The EU regularly widens the range of countries to which it offers low tariff access. The new GSP+ scheme introduced in June 2005 will offer to many non-ACP countries, for the first time, access to the European market that is on many products as good as that provided under Cotonou. Also, the EU’s reform to its common agricultural policy is pushing down European prices for products such as sugar.

In all such cases ACP negotiators have to ask (usually by consultations with industry representatives):

- ◆ will exporters be driven out of the European market by changes that have already been agreed;
- ◆ will they be driven out by changes that are likely in future?

If the answer is that exports are likely to cease countries may feel that they should not ‘concede’ anything on reciprocity unless there are other preferences that will continue to be useful.

If the answer is that exports will continue, but will be more difficult, the question becomes whether or not current preferences can be maintained outside an EPA and whether this would avoid the undesirable consequences of reciprocity. If the GSP+, for example, is eroding many ACP preferences, then would it make sense for a country not to join an EPA but to seek GSP+ status instead?

Box 7. Countries that do not need an EPA for exports

The states that would gain little on market access for goods from an EPA fall into three groups:

- ◆ LDCs that have access under Everything But Arms (EBA);
- ◆ non-LDCs that consider the new GSP+ would offer equal access to that provided by an EPA;
- ◆ countries that export goods on which EU tariffs are low or zero and which do not expect to diversify into goods for which preferences would be useful.

Box 8. ACP negotiating formats

Some ACP states are in, or have committed themselves to form, CUs. Others are building FTAs. A third group are not yet in either type of trade regime, although they may be considering joining. The scope for differentiation within an EPA varies between these three.

The CU signatories must have one, common basket for most of the products on which they will remove tariffs on imports from the EU. And they will have to agree this formally in advance of concluding the EPA. If their CU is not yet complete they can have different implementation schedules and maintain different rates during this period – but only until their CU is due to be completed. If, for example, they have set the target of 2010 for completion of their CU they will have to implement from this date identical tariff cuts on imports from the EU.

Such pre-EPA agreement is not required of states that belong only to a regional FTA or to no agreement. But there will be post-EPA integration problems if no attempt is made to harmonise each of these countries' liberalisation schedules.

states that negotiate an EPA as a customs union (CU) have an obligation to liberalise more or less on exactly the same items (see Box 8). Even for those ACP states that belong to a regional free trade area, any differences in reciprocity schedules could create problems.

The ACP negotiating position *vis-à-vis* the EU will be enhanced if they are able to forge a common position. But this is a major challenge: it may be difficult to reach a consensus given the objective differences in their interests. Negotiators need to consider carefully how to overcome these differences. The following four-step approach begins with the easiest areas for compromise, reserving for the last stages only the thorniest problems.

3.2.2.3 Rules of origin

In Cotonou the rules of origin apply only to ACP exports, but under an EPA they will also apply to EU exports. The tariff reductions that the ACP are obliged to make on 'substantially all' imports under reciprocity, will apply only to goods originating in the EU. It will be the origin rules that determine whether or not a refrigerator or computer is genuinely 'European' or contains too many imported inputs.

The precedent of the EU–South Africa Trade, Development and Co-operation Agreement (TDCA) indicates that the rules of origin for ACP exports and imports need to be identical, even though there can be more than one way of acquiring originating status. Where there are alternatives, one of them may be more easily met by EU producers and the other by its trade partner's producers; but both are potentially available to all.

For example, the TDCA provides two alternative rules under which essential oils (ex Chapter 33) can qualify as originating exports even though they include non-originating imported inputs. *Either* the value of all non-originating materials must not exceed 40 percent of the price. *Or* inputs classified under the same heading as the product must account for 20 percent or less of the price and all other non-originating inputs must be classified under a different heading.

Agreeing rules of origin for EPAs will be a process that is both technically complex and politically fraught. Reciprocity gives the ACP a negotiating power that they did not have with Cotonou – but they can wield that power only if they have access to technical knowledge. In addition, the impact of the rules on intra-regional trade has to be assessed.

Ideally, the ACP want liberal rules to apply to their exports to the EU so that modest levels of processing confer originating status and allow their exporters to sell duty free to Europe. But the same rule would apply domestically. If one EPA member wishes to protect its milling industry by requiring a high level of processing to cereals, the same will apply to the region's exports of milled products to the EU.

3.2.2.4 *The four steps to consensus*

Step 1: ensure the EPA includes useful provisions for every member. The easiest way to accommodate states that have little interest in preferential access to the EU market is to ensure that the ACP negotiating brief includes other measures that would be useful to them. In order to be attractive to such countries an EPA must include features not present in EBA or GSP+. These include:

- ◆ the non-tariff measures described in the previous section (such as improved origin and health rules);
- ◆ trade-related development support;
- ◆ guarantees of permanence and joint decision-making/dispute settlement.

It might be thought that there is no need to spell out the desirability of including such measures in the ACP negotiating brief. None are ‘undesirable’ – they could be useful for all ACP. But they may not be the very highest priority for states that need either a continuation or, even more pressing, an improvement in preferences in order to sustain their exports. If the EU were to be resistant to these additional demands, such countries might feel pressure to drop their demands and to settle for a deal on market access. But such a response needs to be weighed against the desirability of maintaining pan-regional support for the ACP negotiating position.

Step 2: Harmonise reciprocity schedules where possible. Where the ACP EPA states make very different reciprocity offers, it may be possible to reach a compromise partly through scheduling and partly by identifying non-core differences.

If one country finds that it is planning to exclude from liberalisation a product that its partners wish to liberalise (because they have higher priorities for exclusion), it could consider whether its interests would be served almost as well by including the contentious item in the liberalisation basket but deferring tariff cuts until the end of the transition period. Many things will be different in 2020 or 2030 than they are now.

Step 3: Identify ‘least dangerous’ items. Having harmonised their reciprocity offers as far as possible, negotiators will be left with a group of products where such compromise is not possible – countries have different policies. The key is to identify those products for which cross-border trade is improbable (because the tariff differences are small and/or they have a low value-to-weight ratio). These are ‘least dangerous’ in the sense that they pose a small threat to regional integration.

It may be possible to accommodate different tariff regimes for such goods within an EPA. Even for CU members it is possible to maintain a small number of differences in trade policy provided that these do not stop members opening their borders to trade with each other. The EU, for example, did not have a common external tariff for bananas until 1992, and members also maintained different quotas on clothing which they reinforced by restricting intra-EU trade.

Step 4: Dealing with the ‘killer’ items. What remains are ‘killer’ items:

- ◆ on which countries cannot agree a harmonised offer;
- ◆ with characteristics that make intra-regional trade likely;
- ◆ which could undermine regional economic integration (see Box 9).

Box 9. How EPAs may undermine regionalism

If country A excludes widgets from liberalisation and maintains a 100 percent tariff, but its neighbour, B, removes all duties, traders may circumvent A's restrictions by transporting EU goods across the border from B. This is particularly likely if the tariff difference between A and B is sufficiently large to make such trans-shipment commercially viable. In other words, the products that a most wishes to protect are the ones in which smuggling is most likely. To avoid it rigorous border controls must be maintained to prevent trans-shipment. Although designed primarily to catch EU-originating goods, such controls may well hobble intra-regional trade in the process.

Because they pose such a potential danger this group of products will need careful attention if it is not to cause problems to intra-regional trade after the EPA has been concluded. This may involve intra-regional negotiation at the highest levels.

Negotiation Technique 2 – Communication

In order to arrive at agreement that satisfies all the countries in the region and the EU, negotiators will need to use communication and dialogue skills to promote their interests successfully while accommodating the interests of others. This will include an ability to:

- *assess the perspectives and interests of the negotiators from the other regional states and from the EU;*
- *reframe questions that are generating misunderstandings in their existing form;*
- *articulate criteria by which a decision or position is made;*
- *respond positively to conflictual, aggressive or negative situations;*
- *refocus discussions that have lost track or become unfocused.*

3.3 Knowledge of content

Tip: Negotiators need accurate, detailed information on exports, imports and the trade policies of their country and the EU.

The EPA is likely to be a very detailed, precise agreement. Anything that an ACP state wishes it to provide needs to be spelled out in similarly precise terms (see Box 10).

Box 10. The need for detail

The EU's rules of origin have long constrained ACP exports, but if change is to be negotiated the demand must be expressed very precisely. For example, the Cotonou origin rule for knitted and woven clothing prevents ACP producers using Chinese cloth, which is why most of the successful exports have been of knitwear knitted to form directly from yarn. The rule being proposed for the EFTA–SACU free trade agreement is more favourable – at least on paper. It specifies only that all non-originating materials are classified under a different HS heading than is the clothing produced (which would allow Chinese cloth to be used) subject to the requirement that non-originating materials may not make up more than 50 percent of a final value of the good. ACP states wishing to develop clothing exports need to find out whether or not this 50 percent threshold is sufficiently high: is it normal for the value of a garment to be at least twice the value of the cloth used? If the answer is yes, then it might make sense to push for the EFTA rule; if the answer is no, it may not be worth the effort. Only consultation with industry specialists will indicate the answer.

A similar position is required on negotiations to change EU sanitary and phyto-sanitary rules (SPS). What, precisely, is the problem? Is it, for example, that the new EU rules on leafy plants have minimum inspection charges that are very high because ACP shipments are small? If so, an appropriate demand would be to lower the minimum. Again, consultation with industry stakeholders is a pre-requisite for finding out exactly what needs to be demanded.

3.3.1 The 'easy knowledge'

Tip: There is a vast amount of data. Identifying priorities for data is essential.

Every country delegation needs an intimate knowledge of:

- ◆ what it exports to the EU and might plausibly export in future;
- ◆ its competitors in the EU market;
- ◆ the access terms to the EU under Cotonou, the GSP, the GSP+ and any regime currently available (or in prospect) for its competitors;
- ◆ the products it imports from the EU;
- ◆ its tariffs on these products;
- ◆ government policy on the role of trade with respect to these sectors.

Although this list is a formidable one, the information it describes is in fact the 'easy knowledge' that negotiators must obtain. It is easy in the sense that the information can be obtained from machine readable statistics that can be interrogated by officials (Stevens and Kennan 2005a and 2005b).

3.3.2 The 'difficult knowledge'

Tip: Talk to stakeholders – they know their sectors.

This information can be used to build the foundations of a negotiation strategy which will involve obtaining 'difficult knowledge'. This is information that requires special effort to acquire.

For example, calculating the revenue effects or broad economic impact of an EPA is a time consuming affair requiring specialist expertise. Working with stakeholders to determine how hard choices should be made is also resource-intensive.

For this reason it is important that the ‘difficult knowledge’ is acquired only for scenarios that are plausible. The ‘easy knowledge’ can be used to develop a small set of plausible scenarios that can then be investigated further.

The negotiation Workshop will give delegations the opportunity to:

- ◆ develop alternative scenarios based on the datasets supplied;
- ◆ use the ‘difficult knowledge’ that they possess already to rank these;
- ◆ seek to harmonise these with their regional partners;
- ◆ test them out against ‘the EU Commission’;
- ◆ determine what additional ‘difficult knowledge’ they need to acquire when they return home.

3.4 Knowledge of process

Tip: Precise targets and draft clauses/annexes are necessary – but they are not sufficient. You also need to know how and when to inject them into the negotiations.

The formal arrangement of the negotiations within sectoral and thematic groups is set out in the ‘Roadmap’ for each EPA negotiating group. In addition, the negotiators need to understand the dynamic of the negotiations.

3.4.1 The ACP

Tip: Nothing is forever. Check out how far an EPA will actually constrain future choices.

3.4.1.1 Regional negotiating processes

As is clear from the preceding sections, there will be a need for much negotiation and compromise between ACP states. Each region has its own consultation fora that overlap with the EPA to varying degrees.

3.4.1.2 After the negotiations

The aim of the negotiations is to secure a mutually beneficial agreement that will remain in force for many years. Most of the dynamic benefits foreseen require the agreement to be in place for a good period of time. But it must be remembered that very few agreements are set absolutely in stone: they may evolve, or the circumstances that gave rise to them may change so that they no longer seem relevant.

How far will the ACP be tying their hands if they subscribe to an EPA? What would be the ‘cost’ of failing to implement a provision? What are the prospects of the EPA being challenged by non-members? Answers are needed to all such question so that negotiators can accurately weigh up the implications of signing.

The direct ‘cost’ to an ACP state if, for example, it failed to implement the agreed reciprocity schedule and compromise proved impossible through the consultation and dispute settlement mechanisms, is clear enough. In the final analysis, the EU could suspend preferences on the country’s exports together with all other aspects of the EPA (including development assistance). The indirect impact would be determined by the effect that such measures had on the perceptions of potential investors and traders and on intra-regional co-operation and trade.

It is possible for each country delegation to forecast the potential future value of current preferences and determine in broad terms how long they are likely to provide exporters with a competitive advantage. If preferences are likely to remain very helpful to exporters well into the future, then the market access costs of failing to implement the EPA will be high; if preference erosion is in full flood, such costs may soon be very small. (Because this negotiation Workshop is focused on market access, it is not easy to speculate on the direct cost of the EU suspending aid and other non-market access elements of an EPA.)

More serious might be the effects on intra-regional integration. If one ACP member of an EPA fails to implement its obligations in a manner sufficiently severe to warrant suspension, and the others do not, barriers may be erected between the remaining active members of the EPA and the inactive one.

What about a challenge from outside? The EU has advanced the idea of EPAs on the grounds *inter alia* that they will make its preferential trade regime with the ACP ‘WTO compatible’. During the negotiations the EU might object to ACP proposals on the proportion of their imports to be liberalised (or the length of the transition period) on the grounds that such a regime would not be compatible with the WTO’s Article XXIV. Who determines WTO compatibility, and what would be the consequences of a challenge? (See Box 11.)

Box 11. WTO scrutiny of EPAs

Following signature, EPAs will be submitted to the WTO’s Committee on Regional Trade Agreements (CRTA) to be assessed in terms of their conformity with WTO rules (including Article XXIV – and the analogous Article V of the General Agreement on Trade in Services (GATS)). Any WTO member can belong to the working party charged with evaluating the EPA. Partly for this reason, it seems unlikely that the CRTA will ever reach a formal position on the EPA’s compatibility. Very few regional trade agreements have been declared to be compatible or incompatible in this way.

In the absence of the ‘seal of approval’ from the CRTA, it would be open to any aggrieved WTO member to challenge an EPA on the grounds that they had suffered material loss as a result of either the preferences given by the EU to ACP exports or those given by the ACP to EU exports.

In the absence of any details of an EPA or much ‘case law’, it is not possible to speculate on whether a challenge to the WTO Dispute Settlement Body would be successful. But what if it were? What would be the cost? In particular, what risks do ACP states take in pushing for a low percentage of their trade being liberalised over a long period of time?

If the EU or ACP lost a WTO dispute partly on the grounds that the latter were liberalising too small a share of their imports and/or over too long a period of time to be covered by Article XXIV, they would have two choices. One would be to walk away from the EPA – with the consequences described above. The other would be to amend the EPA to take account of the WTO Appellate Body’s ruling. In the hypothetical case cited, this would mean either increasing the proportion of imports that are liberalised or shortening the period of time. Provided that this were done, no penalties would be payable to the plaintiff.

In other words, the only ‘risk’ that the ACP take by pushing for a low proportion of their imports to be liberalised over a long period of time is to make a challenge more likely than it otherwise would be. If such a challenge arose, and were successful, they would need retrospectively to increase the proportion of goods that are liberalised or reduce the period.

3.4.2 EU processes

Tip: The Commission shares power with the EU member states. It may be possible to turn this to your advantage.

3.4.2.1 During the negotiations

The ACP negotiate face to face with the European Commission – but it is the 25 member states that approve the Commission’s negotiating mandate and must ultimately approve any deal. This multi-layered process presents the ACP with a difficulty – but also an opportunity.

The range of difficulties confronting the ACP varies between the areas of negotiation. It is narrowest in the negotiations on market access for goods (see Box 12). The Commission uses its role within this system to its advantage during negotiations. If the ACP make a demand that goes beyond what is approved in its mandate, the Commission can state simply that it has no authority to agree. It can even refuse to discuss a demand that the ACP have tabled on similar grounds. This allows it to block demands that it does not wish to concede – if the ACP acquiesce.

Box 12. The European Commission’s powers

The member states have transferred to the Union institutions the power to set Europe’s tariffs. The 25 member states will still need to approve anything that the ACP agree with the Commission, but their ability to make changes is limited. By contrast, many regulations that govern trade in services remain the exclusive or the shared responsibility of the member states: many things that might be agreed during the negotiations with Commission officials may remain unimplemented because they require action by member states – action that the Commission cannot force the member governments to take.

During the negotiation of the TDCA South Africa adopted a similar tactic. Negotiators stated that they had to submit EU demands for consideration by the social partners in the National Economic Development and Labour Council (NEDLAC). Negotiations eventually reached an impasse at both the official level and that of trade ministers. The impasse was only broken by heads of government. The TDCA precedent shows that, as in any negotiation, the ACP need to realise that they do not need to take ‘no’ for an answer – but that they will have to work hard (at several levels) to get it changed to a ‘maybe’.

It takes a great deal of skill and knowledge to balance such brinkmanship against the danger of a collapse in the negotiations. It requires an understanding of the extent to which the EU (and other ACP partners) need to reach an agreement and are willing to compromise or to hold out until the bitter end.

One way for the ACP to ‘use’ the EU system in a way that is less confrontational is to lobby ‘sympathetic’ member states (both directly and via NGOs) to support the changes that the Commission is unwilling to concede. Such influence can only be indirect, but it should not be overlooked.

3.4.2.2 After the negotiations

Although the EPA, like Cotonou, will probably have dispute settlement procedures, ACP experience is that these are of limited use in persuading the EU to fulfil obligations that they believe it has undertaken. To overcome this problem, some form of internalised pressure needs to be built into the architecture of the EPA. One way to do this is to make ACP commitments conditional upon EU action (see Box 13).

Box 13. Making commitments binding

Because EPAs will require ACP states to take action as well as the EU it could be framed in such a way as to make the one conditional upon the other. This could help deal with the standing ACP complaint about EU foot dragging (see Box 1).

Most EU trade agreements follow a standard architecture: they contain annexes that list the date on which tranches of products will be liberalised. An alternative would be for liberalisation to occur not on a specified date but after the (successful) completion of specific activities that are relevant to liberalisation. For example, the ACP might seek to defer liberalisation of agricultural products until after the successful completion of a 'staple food crop development programme', specified in the EPA, designed to help small holders compete with liberalised imports from the EU. If the development project does not happen then nor will the liberalisation.

Negotiation Technique 3 – Strategy Building

A final group of techniques relates to the negotiation strategy itself from prior preparation to final delivery on agreements made. Effective negotiators need to do all of the following:

- *Identify the core capabilities and roles that exist within the negotiation team – for example, research, analysis, dialogue, conflict resolution, internal negotiation (within the teams' own government and within the team itself), public relations and overall team leadership.*
- *Identify the phases of the negotiation: preparation, modifying positions, arriving at agreement, delivering on and following up the agreement.*
- *Identify the techniques appropriate to each phase:*
 - *preparation requires active research and internal negotiation;*
 - *modifying positions requires active use of the research capability as well as good public relations;*
 - *arriving at agreement requires ability to assess and play to interests of other parties;*
 - *following up requires that a team is in place to keep up to date on progress.*

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