

**Speaking points by David O'Sullivan,
Director General of DG Trade, European Commission
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- I am a trade negotiator - normally a mercantilist profession! But DG Trade does not approach these negotiations in the usual way, where we seek to gain economic advantage from each other. This is clearly not the objective with the ACP. Our objective with you is to build on our privileged relationship and to secure and improve your market access into the EU, in order to serve a wider development goal. This is the very different context within which we are operating, so when I continue to hear some claim that we in the EU are following a predatory approach in these negotiations I must say that this is quite wrong. What is true is that, to be legally secure and deliver the development benefits, there must be a sufficient degree of reciprocity in our Agreement. But our primary concern is to serve the overarching development dimension.
- This Partnership - whatever the final form its trade component takes - will stand the test of time. The Cotonou Agreement will remain in force until 2020 and all our Services – with Stefano's of course at the forefront – will continue to work with all our energy and all our commitment, with you, to deliver your development priorities. We need to build a new trade relationship to accompany that process which will replace and improve upon current arrangements and provide an advantageous platform for the future. We need to build something that will stand the test of time.
- But in the coming weeks there are nevertheless some fairly fundamental choices that will need to be made, if only to provide traders and investors in your markets with the visibility and predictability they need to prepare for business in 2008. In very operational terms, based on the Communication adopted by the European Commission on October 23rd, I'd like to set out how we see the way forward from here.
- As of January 1st, neither the trade preferences set out in Annex V of the Cotonou Agreement, nor the waiver granted in 2001 by the WTO, will any longer be in force. We are therefore faced with a firm deadline and there is no easy way round this.
- We all hoped that each of the six regions would be in a position to conclude full EPA's before this deadline – and indeed, this is what we committed to at the May 2007 ACP-EU Council of Ministers. But it's now clear that this will not happen and we have to be

pragmatic in dealing with this situation, to at least offer solutions to those most concerned by this turn of events. We can do this in several ways.

- The first is by making it clear, as I think we have done, that we are prepared, for those who so wish, to build stepping stone agreements, focussing in particular on the need to have WTO compatible goods market access arrangements in place. Negotiations would then need to continue on any outstanding aspects to conclude full EPA's, in line with your mandates and ours. So the important point in the next few weeks is to secure arrangements which allow trade to continue without disruption. This then is one area where there can be flexibility, provided we maintain momentum towards the end objective.
- The second way we can offer solutions is by opening up the discussion as regards the initial signatories of any EPA. With the flexibilities and the support we are offering, we believe very strongly that full reciprocal EPA's are fundamental development tools for all ACP countries, whether they are LDC's or non LDC's. But in the time pressured context which we now face, there is an obligation upon us to switch the discussion from these missed opportunities affecting all your countries to the immediate losses non LDC's alone will face on January 1st if we have not put appropriate arrangements in place.
- For these non LDC's we must make a solution available which guarantees and improves their current market access. We are therefore prepared to engage with smaller groupings than those initially envisaged if this desire is so expressed. But equally I want to be very clear that we will do so only on the basis that the door remains very much open to all interested Parties to join, whether today or a couple of months down the line.
- This does not change or dilute the standard we need to meet in any EPA. It remains the case that traders and investors must be provided with legal security, by building an Agreement which will not be vulnerable to legal challenge. I think we've been pretty clear as to where we see the benchmark in this respect. I recognise, Mme President, that "substantially all trade" is not a clearly defined notion. But we can look at benchmarks set by others, such as the US, with other countries of comparable levels of development. And we can of course talk to those in Geneva who deal with this topic to get a better sense of how others interpret this clause.
- We on our side have done this work, and we have sought legal advice from those in our Services with long experience of working with the WTO. Our professional advice is that

less than 80% liberalisation of EU goods, or a period of more than 15 years, will make us vulnerable. I say this in good faith. It is my professional advice as to how we can expect to meet our WTO obligations.

- Quite frankly, even our proposal that we should do a minimum of 80% over 15 years will not go down well with some countries in the WTO. But we think that, on balance, taking into account the nature of ACP countries, it probably can be defended. But we don't believe it would be prudent to go further, as there is a clear risk it would not stand up to scrutiny.
- Nor, more fundamentally, do we believe it necessary to go further. I don't need to be convinced that sensitive sectors exist, whether for political or economic reasons, and require longer or even permanent tariff protection – And we are offering extensive flexibility to do so.
- Where there is direct competition between European and ACP producers, the case is perhaps at its clearest. In contrast, given the commitments we have offered on support for fiscal adjustment, I don't think tariff loss alone is a strong argument for treating a product line as highly sensitive.
- Above all, what we need to see is the wider picture: by and large our economies are complementary. Bar the few exceptions which we know we will need to allow for, we do not produce the raw material you export. And you do not produce the industrial equipment, agricultural tools or the hospital equipment we are able to export. Your economies, your businesses, your consumers, will gain by liberalising in these areas, and I believe that in every ACP region or country the 80% threshold can be seen as an opportunity to inject new economic oxygen and create greater purchasing power for citizens, local business and public bodies.
- For countries concerned that they could one day be competing directly with the EU in sectors they are not in today, we have also offered a very flexible infant industry safeguard. This could be used to re-impose tariffs if and when an infant industry experiences difficulty or emerges in the future.
- With all these flexibilities, I'm convinced we are still able to build market access arrangements which will serve the cause of development and be credible in WTO terms. We need to be clear that other developing countries are watching these final stages of

our negotiations very very closely. They believe that our current arrangements discriminate against them and they have the law on their side. They will not give us the benefit of the doubt if we do not produce credible agreements.

- Where no EPA at all can be signed, countries will benefit from the non discriminatory Generalised System of Preferences. Of course we recognise the difficulties this can create in terms of preference loss for certain ACP non LDC. But if we have not been able to put in place a WTO compatible goods agreement, there is no other option which is either legally sound or politically sustainable. This is the default option, but I want to be very clear that it is far from being our preferred outcome.
- It's worth once more running through the ground of article 37.6 of Cotonou, which deals with the question of legal alternatives and offers those countries who in 2004 choose not to sign up to EPA the opportunity to ask for WTO compatible alternatives which guarantee existing market access. First point is of course that we happily extended, at your request, the deadline for examining any such requests from 2004 to 2006, and we have remained flexible. But the reality, whichever year we stand in, is that no alternatives do the job.
- Improving GSP up to Cotonou was a theoretical option. But we knew that it was neither politically feasible nor desirable for you. This would obviously be tantamount to fast tracking preference erosion, and would not be in your interest. GSP+ is not a viable legal option either and, in any event, would similarly not provide the access you need on a number of key products.
- Outside EPA's the only option that would be left is the waiver. – And, indeed, a number of your countries and regions have again started calling for the current waiver to be extended. I think it's important that we be very clear that this cannot happen. When we obtained the waiver, in 2001, in addition to the compensation you will all remember we had to pay, we gave a solemn promise that, as of 2008, a WTO compatible arrangement would be in place. People will hold us to that promise.
- A waiver in any case requires, according to WTO rules, "exceptional circumstances". 2 months before the deadline, having been granted 7 years leniency to prepare the way forward, I think we have to be honest with ourselves that there is no way we could argue that such circumstances exist. I believe it would not be credible, to plead such a case and that a waiver stands no chance of being accepted whether by consensus or even by

the never used three fourths majority vote. Meetings I had this week with those concerned about preferences granted on bananas certainly confirm this view. There is a great deal of recrimination over our preferences by other non ACP developing countries.

- We need to realise when we review this option that the Cotonou trade regime involves a level of discrimination whose economic impact is far greater than any other such scheme. The sensitivities of 3rd countries, in Latin America and in Asia, are therefore that much the greater. AGOA is simply not comparable in this respect.
- We also need to understand what has happened since the 2001 waiver negotiation. In that period, with regard to Cotonou preferences, we lost good offices governing canned tuna, and we lost two arbitration panels relating to bananas which were part of the waiver. And now we are involved in a new banana compliance panel which is a further complication, and I do not exclude that some could go immediately for retaliation and sanctions on the basis of previous rulings.
- So we must be realistic. If there were an easier route we would try to find it. The waiver option is not feasible. In the same spirit and for exactly the same reasons, nor could we simply slip into some kind of de facto illegality in order to preserve Cotonou market access. As for the idea that we could lodge a request and simply let time pass while a complaint panel delivers its judgement, forgive me but this would make a mockery of the Dispute Settlement Mechanism and the WTO as an institution; it would be long term poison for the multilateral system and we would all pay an extremely high price, not least in the DDA.
- Commissioner Mandelson put all this very plainly, in the European Parliament earlier this week: "There are no alternatives that are defensible under WTO rules, or indeed fair to other developing countries outside the ACP. I recognise that this puts pressure on the negotiations. But the pressure is external and it comes from the reasonable expectation of other developing countries that the EU and the ACP will get our house in order as we promised."
- Let me finish by saying how important I also consider the discussions on development finance to be. Stefano will address this with all the detail the topic merits and requires.
- I want to be clear that we fully realise that this is not a normal trade negotiation. If we could give more, we would do so. We are only emphasising the need for reciprocity

because we need this agreement to be watertight, to build a solid trading platform for traders and investors, and in so doing for your development. We want to build legally solid agreements which provide certainty for economic operations. Protracted legal cases in Geneva will carry immediate trading costs (because operators will be scared off orders and investments) whatever the final outcome.

- We have spent a long long time discussing and negotiating these EPA. It's more than 10 years since the Green Paper first addressing the topic came out. This does not make the decisions that lie ahead easy. We fully appreciate that some countries may not feel able or ready to take this course, and at the end of the day if you don't agree the choice is of course yours. In which case Europe's door remains open to engage and discuss the way forward together – today and, of course, in the months and years ahead of this Partnership to which we remain wholeheartedly committed.
